

A H E
Attorney's Practice
IN THE
Court of Common Pleas:
OR, AN
INTRODUCTION

TO THE
KNOWLEDGE of the PRACTICE of that
COURT, as it now stands on the Regulation
of several late ACTS of PARLIAMENT,
RULES, and DETERMINATIONS of the
said COURT.

WITH
Variety of useful and curious PRECEDENTS in
English, drawn or peruted by Counsel; and a
Complete INDEX to the Whole.

By ROBERT RICHARDSON, Gent.

The Fifth Edition, with Large Additions.

In TWO VOLUMES.

VOL. I.

L O N D O N:

Printed by His Majesty's Law-Printers;
For B. TOVEY, J. RIVINGTON and SONS, P. UDELL,
W. OWEN, S. CROWDER, B. LAW, W. ILLINGBY,
G. ROBINSON, E. BROOKE, S. BLADON, W. STURGE,
T. WHITLEDON, and T. WALLER.

1778.

T H E
P R E F A C E.

THE *Attorney's Practice* in the *Court of King's Bench* having met with a very favourable reception, and being univer-sally allowed to be the most useful book of the kind hitherto published, the author of it was induced to compile the following work, which he formed on the same plan with the former; here-

P R E F A C E.

in are set forth under their proper heads the several acts of parliament relating to the practice, such rules of court as are now in force, adjudged cases on most points of practice, and a great variety of useful precedents.

The statutes and rules of the court are not set forth in a brief or summary way, but the enacting and ordering parts generally at large, so that the reader will scarce ever have occasion to apply to the statutes or rules themselves.

To the acts of parliament; rules of court and adjudged cases, the author has chiefly confined himself in this work, chusing rather to be silent, than to say

P R E F A C E.

say any thing for which he had not sufficient authority, and being cautious of nothing more than leading the young practitioner into a mistake.

The precedents, of which the greatest part were drawn or perused by counsel, are such as will be most frequently wanted in the general course of business.

To render this book the more useful, a very copious index is added, drawn under a great variety of heads, so that the reader may with ease apply to any particular point of practice he shall want to be informed of. •

To the second edition was added a new volume of pleadings,

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a thing desired by many, and, it is hoped, will be acceptable to all who are willing to attain a competent knowledge in their profession; for it is a certain truth, that he can never be an able attorney who is not a good entering clerk, and tolerably well skilled in special pleading. Formerly all attornies drew their own pleadings, and never had occasion for any assistance but the advice of the most learned. This kind of learning, which is now too much neglected, led them into the very reasons of the practice, and into a knowledge of the common law, which none but a special pleader can be said to be thoroughly master of: An attorney, without being acquainted with special pleading, can

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can have no other, than a confused knowledge of such particular instances of practice only as have passed through his own hands, and upon the least variation, is as much at a loss as if he never knew any thing of the matter; hence spring demurrers, motions, expence and endless delays to the suitors, and discredit to the practicer; for which reasons the loss of this branch of learning among the generality of the profession is greatly to be lamented, and the retrieving of it can't be too much recommended.

In the third edition were added instructions for levying fines, and suffering common recoveries, with some directions touching replevins.

In

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In this fifth edition, besides a great variety of new acts of parliament and rules of court, and also adjudged cases from *Barnes, Wilson, &c.* are many additional notes and observations, and the following entire new heads, to take them alphabetically:

1. Action for criminal conversation.
 2. Inrolling deeds.
 3. Motions.
 4. Mutual debts and credits.
 5. Proceedings against peers and members of parliament.
 6. Proceedings in order to save the statute of limitations.
 7. References from court. And
 8. Summonces.
- See the Index;

The following order of the chief justice not being published
2 . till

P R E F A C E.

till that part of this volume was printed off, in which, it could with any degree of propriety be introduced, it is here inserted: A

Under the printed papers of settings in and after *Hilary* Term, 1778, is the following notice given, *viz.*

The Lord Chief Justice to obviate a great expence and inconvenience to defendants and their witnesses, in causes entered for the *first* day of sittings *after* term, through the plaintiff's not passing the records in proper time, hath thought fit to order, that all records in such causes, be passed and left with his marshal, on the preceding evening of such sitting, by the hour of seven.

T H E



THE

Attorney's Practice

IN THE

Court of Common Pleas.

Of the Jurisdiction of the Court.

ALL pleas are regularly divided into 'pleas of the crown, and into common or civil pleas. Pleas of the crown are those which concern treasons, felonies, misprisions of treasons, &c. This court is the lock and key of the common law in common pleas, and therefore called the *Court of Common Pleas*; for in this court real actions, whereupon fines and recoveries (the common assurances of the realm) do pass, and all other real (*a*) actions by original writs, are to be determined. In all (*b*) personal

VOL. I.

B

sonal

(*a*) Actions real are such actions whereby the demandant claims title to any lands or tenements, rents, or commons, in fee-simple, fee-tail, or for term of life. Every action real is either possessory, that is of his own possession or seisin, or ancestor, that is of the possession or seisin of his ancestor. 6 Rep. 3.

(*b*) Actions personal are such actions whereby a man claims a debt or other goods and chattels, or damage for them,

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sonal and mixt (c) actions, this court and the court of *King's Bench* have a concurrent jurisdiction.

The jurisdiction of this court is general, and extendeth itself throughout all *England*.

Generally all actions (d) in this court are founded upon original writs issuing out of the *Chancery*, and returnable in this Court, whereupon the plaintiff proceeds either to arrest the defendant, outlaw him, or serve him with a copy of process, pursuant to the statutes 12 G. 1. c. 29. 5 G. 2 c. 27. Perpetuated by 21 G. 2, c. 23.

them or damages for wrong done to his person, and is properly that which in the civil law is called *actio in personam*, which is brought against him who is bound in covenant or default to give or grant any thing. "*Terms of the law*," Tit. "*Actions personal*."

(c) A mixt action is a suit given by the law to recover the thing demanded, and damages for the wrong done; as in assize of novel disseisin, which writ (if the disseisor makes a feoffment to another) the disseisor shall have against the disseisor and the feoffee, or other tertenant, and thereby shall recover his seisin of the land, and his damages for the mesne profits, and for the wrong done him; and so is an action of ~~writ~~ *replevin* and *quare impedit*; but an action of *detinue* is not called an action mixt, altho' by it the thing withheld is demanded, and shall be recovered if it may be found, and damages for the withholding, and if it cannot be found, damages for the thing and the detaining; but still an action of detinue is called only an action personal, because it should be brought only for goods and chattels or charters.

(d) An action is the form of a suit given by law to recover a thing, as an action of debt, &c. or as it is in 8 Rep. 151. *an action is a right of prosecuting to judgment that which is due unto any one; actio est jus persequendi in iudicio, quod alicui debetur.*

But

in the Court of Common Pleas.

3

But this court may hold plea on writ of privilege issuing originally out of this court at the suit of any attorney, officer, minister, or clerk of the court intitled to such writ.

It may also hold plea by bill, which is in the nature of a petition to the court, against any attorney, officer or minister, intitled to the privilege of the court; and expresses either the grievance or wrong which the plaintiff has suffered by the defendant, or else some fault by him committed against some law or statute of the realm.

A knight, citizen, burghers, or other person intitled to privilege of parliament, may be sued in this court by original bill, in manner as directed by the statute 12 & 13 W. 3. c. 3.

This court may, upon proper suggestions, grant prohibitions to keep, as well temporal, as ecclesiastical courts, within their proper bounds and jurisdictions, without any original writ or plea depending; for the common law, which in these cases is a prohibition of itself, stands instead of an original. 12 Co. 108.

Actions are also removed into this court out of inferior courts of record by writ of *Habeas corpus cum causa*, or (e) *Certiorari*; and out of inferior courts not of record, by

(e) *Certiorari* is a writ that lies to remove a record into a superior court from an inferior court of record, where the party supposes he may not have equal justice done him.

(f) *Pone*, (g) *Recordari*, (b) *Accedas ad curiam*, or writ of false (i) judgment.

This court hath also jurisdiction for the punishment of its own officers and ministers, and all other persons guilty of contempts against the rules and orders of court.

*Sir John
Walter refused
to surrender
his patent
without cause
of misbehavior
shown, the
same being
granted dur-
ing good be-
havior.*

Notwithstanding king *Charles I.* commissioned Sir *John Walter*, a profound learned man, a grave and able (k) judge, and of great integrity and courage, by his royal letters patent, to exercise his office, during his good behaviour, yet, he being in the king's (l) displeasure, was in the beginning of *Mich. (m) term*, 5 *Car. 1. A. D. 1630*, before he set in court, (n) required, by command from his majesty, to forbear to come to *We minster (o) Hall*, for the purpose of exercising his judicial place in (p) court, and, in obedience to the said command, he did

(f) Is a writ whereby a cause depending in the county court is removed into this court.

(g) Commonly called a *repleas*, taking its name from the first syllable of each word in the name of the writ, viz. *recede repleas equi lam.*

(b) This writ lies to remove a cause out of the court baron into this court.

(i) If a false judgment be given in a court not of record, as in a county-court, hundred, or court baron, the party injured may have a writ of false judgment, returnable in this court.

(k) *Whitl. Mem. Engl. Af. 16. Col. 1. Cr. Car. 147:*

(l) *Whitl. Mem. b.*

(m) *Cr. Car. 147.*

(n) The king discharged him from his service by message, *Whitl. ib. see id. 14. Col. 1.*

(o) *v. Jo. 257.*

(p) *Cr. Car. 147, 153.*

(q) forbear,

(q) forbear, and never exercised his office; after the king forbad (r) him; but yet he still retained his (s) post; and because his judicial office was conferred on him, *quam diu se bene gesserit*, he would not leave his place, nor surrender his patent, but by the legal proceeding of *Sci. Fa.* to try, whether he did *bene se gerere* or (t) not; and that the king might shew what cause he had, for determining his patent, or for him to forfeit it; so he continued a judge to the time of his death (u).

After the passing the votes against the judges, for their opinion* in sale of ship money, 16 December 1640, and transmitting them to the house of peers, and their concurring with the house of commons therein, an address was made to the king shortly after, that his majesty for the future would not make any judge by patent (w) *during pleasure*, but that they might hold their places hereafter, *quam diu se bene gesserint*; and his majesty did readily grant the same; and in his speech to both houses of parliament, at the time of his giving his royal assent to two bills, one to take away the High (x) commission court, and the other the court of star (y) chamber, and regulating

Commissions of the judges doing good behavior, instead of during pleasure,

(q) W. Jo. 230.

(r) Whitl. Map. Engl. Af. 16. Col. 1.

(s) Id. ib.

(t) Whitl. Mem. 16. Col. 2.

(u) Cr. Car. 147.

(x) Clar. Hist. Rebel 121.

(y) Stat. 16 Car. 1. Chap. 11.

(z) Stat. 16 Car. 1. Chap. 10.

quam diu se bene (e) gesserit, refused to surrender the same, without a *Scire Facias*: so that he continued a justice of this court, though prohibited to sit (*f*) therein; and, notwithstanding his removal, enjoyed his patent, and received a share in the profits of the said court, as to fines and other proceedings, by virtue of his patent; and his name was used in those fines, &c. as a judge of that (*g*) court.

By Stat. 20 *Edward III.* chap. 1. the Judges salaking's justices are to take no fee, but of ^{ries.} the king.

The ordinary allowances of the judges, were, in *Edward I.*'s time, very (*b*) liberal, according to (*i*) *Whitlock*.

By stat. 10 *Hen. VI.* stat. 2. the salaries of the judges were to be paid them half yearly, in *E.* and *M.* terms, by the lord high (*k*) treasurer of *England*; but it appears by the year (*l*) books, that they were to be paid

(e) T. Jo. 43. T. Raym. 217.

(f) T. Raym. 217.

(g) 3 Ruther. Histor. Collect. 1364.

(h) The salary of the judges was liberal anterior to the reign of *Edward I.* according to Sir *William Dugdale*, for he informs us, the chief justice of England received 1000 marks a year, for his support in that great employment, so early as 44 *Hen. II.* Dugd. Orig. Jur. 20.

(i) Whitl. Mem. Engl. Af. 344.

(k) The treasury is now and hath been in commission, a great number of years.

(l) 10 *Hen. VI.* fol. 1 *Hen. VII.* fol. 3, 4, 5.

out of the (m) arrears of the customs, by the customers and comptrollers of *London*; and that it was enacted by the said statute, that they should pay to the justices, out of the first monies arising out of the customs; and that they should have their proportion by the day, and it was held that the customers were liable, though the king granted a licence to some merchants, to retain the customs, in their hands, for the judges met at *White-Fryars*, and agreed to sue, but the customers (n) complied.

From the death of king *Hen. VI.* to the date of their patents, in king *Richard III.*'s time, the judges had a privy seal to receive their salaries; as they had from the meantime, between the death of *Richard III.* and the date of their patents, in *Henry (o) VII.*'s time.

Sir *William (p) Dugdale*, is of opinion, that the salaries of the judges were more cer-

(m) By stat. 1 Geo. III. chap. 23. sect. 3. the salaries of the judges are payable out of the annual sum granted for the support of his majesty's household, and the honor and dignity of his crown; and by sect. 4. they are, after the death of his majesty, to be charged upon and paid out of the estate, assigned for the use of his majesty's civil government, until he shall be satisfying after such demise, until some other provision be made by parliament for the expense of his civil government; and until the making such provision, and securing the continuance thereof, such salaries shall be paid out of the monies applicable to the said uses and expenses.

(n) See Year book, 1 *Henry VII.* fol. 3.

(o) See Year book, 1 *Henry VII.* fol. 4, 5.

(p) See Eng. Jur. 105.

tain after 18 *Henry VI.* because in that year the judges of all the courts in *Westminster Hall*, together with the attorney general, and king's serjeants at law, exhibited a petition to the parliament, in *French*, a copy whereof may be seen in *Sir William's Origines (q) Juridicales*; soon after which their salaries were (r) encreased.

Oliver's (s) Parliament provided that every judge should have a competent supply, according to his great pains and quality, for their better encouragement and support.

By stat. 12 & 13 *William III.* chap. 2. stat. 13. the salaries of the judges were ascertained and established; during which reign, and until the accession of his present majesty's great grandfather, king *George I.* the salaries of all the judges (the chiefs as well as the puisne) were equal, viz 1000*l.* a year, upon whose accession they were increased by distinct patents from those, by which they were appointed judges viz.

The salary of the chief justice of this court, to double his former salary, and those of the rest of the judges, to half as much again, as their former salaries. See 2 R. Raym. 1319.

By stat. 32 *George II.* chap. 35. sect. 18. the salary of every of the puisne judges is augmented 500*l.*

(q) Id. ib.

(r) Id. 109, 110.

(s) Whid. Mem. Engl. Af. 344.

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By stat. 1 *George III.* chap. 23. sect. 3, 4. such salaries as are settled by act of parliament upon, or granted by his majesty to any judge, shall be paid him as long as his patent and commission continue in force.

The salaries of the judges of this court seem now not only to be ascertained but also established, as follows: The lord chief justice 2500 *l.* (1) *per annum*, every of the puisne judges 200 *l.* *per annum*.

At common law the patents of the judges were determined by the demise of the crown, but by stat. 7 and 8 *William III.* chap. 27. sect. 21. and 1 *An. stat.* 1. chap. 8. sect. 1, 2. no patent or grant of any office shall cease or be void, by reason of the demise of the crown, but shall remain in force for six months, unless superseded by the successor, and by stat. 12 and 13 *Wil. III.* chap. 2. the commissions of the judges are to be made *quam diu se bene gesserint*, but upon the address of both houses of parliament, they may be removed.

The court consists of a chief justice and three puisne judges, created by letters patent; but no one can be constituted a judge of this court, unless he be a serjeant of the degree of the coif.

(1) This judge's salary was encreased from 2000 *l.* to 2500 *l.* a year, by his present majesty; and the reason it is not equal to other chiefs is, because all fines and recoveries are levied and passed in this court only, and the fees thereof are almost the sole perquisites of the chief.

in the Court of Common Pleas.



The present judges are Sir *William De Grey*, chief justice; Sir *Henry Gould*, second; Sir *William Blackstone*, third; and Sir *George Nares*, puisne justice.

Officers of the Court of Common Pleas.

THE *custos brevium* is the first or principal officer of the court of *Common Pleas*, and holds his place by grant from the crown; the present patentees are *John Browning*, Sir *Robert Eden*, *Frederick Young*, and *Edward Gore*, who execute the said office by *John Walton*, esq; their deputy.

Custos brevium
His appointment.

The duty of this officer is to record and file in his office all original and judicial writs, and inquisitions taken by virtue of any such writs, all postea's after verdicts, and fines, with the concords signed by the parties acknowledging the same; and the writs of *De dimis potestatem* issued for taking the acknowledgment of such fines, with the transcripts thereof, &c. which fines are by him entered in a book of the same term the respective writs of covenant are returnable, and the proclamations of such fines are by him indorsed, upon the captions, according to the statute. He is also to record and file all writs of entry and summons, writs of *De dimis potestatem* for taking warrants of attorney thereupon, and writs of seisin to support recoveries suffered in the said court; to make copies and exemplifications of the said writs and records when required, and to return writs of *Certiorari*, directed to him, for the

And duty.

removing any writs or other records into the court of *King's Bench*.

Prothonotaries.

Their appointment, &c.

There are three prothonotaries of this court, who hold their offices for their respective lives, and (a) are admitted by the chief justice of the court for the time being. The second prothonotary is admitted on the nomination of the *custos brevium*, who, in right of his office, has the appointment of the second prothonotary. Each of the three prothonotaries has, belonging to his office, one secondary, one clerk of the judgments, and one clerk of the dockets. The present prothonotaries are *William Mainwaring*, *Anthony Dickens*, and *Henry Earle*; their office is No. 2. in *Tanfield court*, *Inner Temple*; and their hours of attendance from 9 in the morning to 1 in the afternoon, both in term and vacation; and from 4 in the afternoon to 8 at night in term time; and to 6 in the evening in vacation.

(a) *Memorandum*, That the office of chief prothonotary in the Common Pleas, being vacant, after the last term, by the death of *Nicholas Rockwood*; and lord *Bresk*, chief justice of the Common Pleas, gave the said office to *Galard* his wife's brother; and, because he was not qualified, revoked it, and conferred the same on *Wbiteley*, contrary to the pleasure of the other justices, who thought *Bill* a fitter person. *Mich. 4 & 5 P. & M. Dy. Rep. 150 b. pl. 1. Rap. Ent. 443.* See the oath of a prothonotary. *Rap. Ent. 442.* See the admission of a second prothonotary, and the admission of a third prothonotary. *Moyle's Entr. fo. 3.*

The chief prothonotary administers the oaths to the officers and attornies of the court; enters on record the patents of the justices, and the patents, surrenders and admissions of the other officers of the court. He enters on a remembrance roll the names of all attornies sworn in court, and makes certificates thereof to the clerk of the warrants, who thereby enter their names in the roll of attornies. He enters all writs of adjournments of the terms; he draws up the general rules of the court, made for regulating and settling the practice in the proceedings therein, and causes the same to be ingrossed and hung up in the treasury chamber at *Westminster*, and gives copies thereof to the judges, and to the other prothonotaries and officers of the court, if required, without any fee. He administers the oaths and declarations taken to the government; and keeps an alphabetical list of the names of the persons taking the same; and files in his office the certificates brought in by them; and also the rolls on which they subscribe their names. He has the custody of the court-book, in which are entered the names of all causes on demurrers, special verdicts, and other matters that are to be argued in court, and of causes that are to be tried at bar, with the respective terms, number-rolls, and offices in which they are entered, and takes minutes of the judgment of the court in all causes argued therein.

The chief prothonotary is also attorney for the city of *London* within this court, and
hath

hath from the city yearly four yards of black cloth to make him a gown; and a livery fee of 1*l.* 13*s.* 4*d.* is paid yearly to him by the secondaries of *London*, as deputy-sheriff.

*Duty of the
three prothono-
taries.*

The three prothonotaries, in term time, attend the sitting of the court at *Westminster*, for the dispatch of such matters as arise from causes entered in their respective offices, and to inform the court of the state of such causes, and to certify the court in matters of practice when required. Each of the prothonotaries has a publick office in one of the inns of court, at which they respectively attend every afternoon, in term time, and out of term every day (sundays and holidays excepted) from nine in the morning till one or two, and from four in the afternoon till eight or nine.

It is their duty to enter on record all declarations, pleas, replications, and pleadings subsequent, demurrers, joinders in demurrers, and judgments. To enter all bills filed against attornies and other privileged persons, and forejudgers thereon for want of appearance. To sign writs of attachment, *Habeas Corpus*, *Procedendo*, *Certiorari*, *Venire facias*, *Subpœna*, *Scire facias*, *Capias ad satisfaciendum*, *Fieri facias*, *Elegit*, *Habere facias possessionem*, *Habere facias seisinam*, &c. To strike special juries, and to sign records of *Nisi prius*. They are to see that all common recoveries be carefully ingrossed on rolls of the court, examined, docketted, and placed in their proper offices, and the writs belonging to the same filed with the *cullos brevium*,

brevium, and to examine all exemplifications of such recoveries.

Persons committed by the court for contempt are examined on interrogatories by the prothonotaries, who make reports thereon, and on other matters referred to them by the court, and tax bills of costs, and state the debts and costs on bills, bonds, mortgages, and other securities, on references made to them by the court, pursuant to the act made in the 4th and 5th years of queen *Anne*, for the amendment of the law. Stat. 4 & 5 Ann. c. 16.

The prothonotaries have the custody of all common and plea rolls, and deliver the same out, and keep an account of the persons names to whom the rolls are delivered, that they may be able to call for a return of them, and make caret papers, certifying defaulters, in order to a prosecution, pursuant to several rules of the court. They keep an account of all rolls received into their offices, after proper entries are made thereon, and keep dockets of all judgments, entries of writs, and other entries, which they carefully examine with the rolls, before they are delivered into the office of the clerk of the *essoins*, or clerk of the warrants, and the writs into the office of the clerk of the *custos brevium*, which are afterwards by the said officers carried into the treasury of the court, but the dockets remain in the prothonotaries offices. The prothonotaries likewise keep remembrance rolls, on which all rules made in court are entered, and on which all recognizances of bail, appearances, *Scire facias*'s

cias's and *Præcipe's* taken at the bar on common recoveries, are entered.

Secondaries.

There are three secondaries in this court, one belonging to each prothonotary, who has the nomination and appointment of such secondary; which appointment has been usually for the joint lives of the prothonotary and secondary. The present secondaries of the court are, *Henry Fothergill*, *Alexander Gerrard*, and *William Skinn*.

And duty.

The secondaries in term-time attend the court and the judges in the treasury, to read all the records, writings, affidavits, petitions, papers, and exhibits; to take minutes of all rules and orders, and draw up the same, and take recognizances in court. They enter all commitments of prisoners, discontinuances, and satisfactions acknowledged upon record, and amend records by order of court. They administer the oaths to prisoners taking the benefit of the late act made for the relief of debtors, with respect to the imprisonments of their persons, prepare assignments of their prisoners estates and effects, and draw up rules for their discharge. On trials at bar they act as associates, that is, call the jury out of and in court, read the record, call the defendant, read all written evidence, call the jury before a verdict given, and record the verdict, take minutes of all special verdicts, and draw up the same, and make copies thereof for the plaintiff, defendant, and judges. They take an account of all fines, and recoveries passed, and suffered at bar. And in term-time, after the rising

The office of clerk of the errors is in the nomination of the chief justice of the court for the time being, and has been usually granted by verbal appointment to hold during the pleasure of the chief justice. *His appointment;* *Clerk of the errors.* *Stephen Hough, esq;* is clerk of the errors to the right honourable the present lord chief justice.

The clerk of the errors, as deputy or clerk to the lord chief justice, has the allowance and receipt of all writs of error brought up on judgments given by this court, and gives certificates thereof, and marks the judgment roll, that a writ of error is allowed, and makes out writs of *Supersedeas* when required, and enters and inrols recognizances of bail taken on writs of error, and makes out writs of *Scire facias* thereon, and gives rules for putting in, and justifying bails, and gives certificates of the neglects thereof; and also gives rules for plaintiffs in error to certify the records, and makes transcripts of the records and judgments, and transmits the same into the court of *King's Bench*, and enters *Mittiturs* on the rolls, importing that such records are removed into the *King's Bench*, and signs, and enters *Non-prosses* for defaults of plaintiffs in error, certifying their records. He hath also the allowance and return of all *Certiorari's* directed to the lord chief justice, for certifying records from this court into any other. *And duty;*

The judges clerks are verbally appointed by their respective judges, to continue during pleasure. *Judges clerks.*

The duty of these clerks is to ingross bail-pieces on writs of *Habeas corpus*, and in-

dorse commitments on the back of the return, and to draw up surrenders of persons surrendering themselves in discharge of their bail, and to ingross bail-pieces on writs of *Certiorari*; to enter all such bail-pieces, as likewise to enter the commitments and surrenders in books kept for that purpose, (which books persons are at liberty to inspect without fee or reward;) to take recognizances of bail acknowledged before their respective judges; to read over to the parties the contents of all fines and warrants of attorney for suffering, common recoveries, and admissions of infants to sue or defend by prochein amy, or guardian, and to write the captions thereon, to ingross the returns of writs of *Dedimus potestatem* directed to their respective judges; to write the *Allocatur* of a fine taken before commissioners upon oath of the due caption thereof, and to write the captions of deeds acknowledged in or out of court to be enrolled, and to administer the oaths to persons making affidavits, or bail justifying, and to draw up summonses and orders made by their respective judges.

The clerks to the lord chief justice make ~~out~~ commissions for taking affidavits and special bails, and file the approbations signed by the puisne judges, in order for such commissions and enter the names of the commissioners so appointed in a book kept for that purpose.

*Associate at
Nisi prius in*

The office of associate at *Nisi prius* in London and *Middlesex* is in the appointment of

the

the lord chief justice, and has been generally granted by parol, to hold during pleasure only. The present associate is Mr. Thomas Lloyd. London and Middlesex.
His appointment;

The duty of this officer is to wait on the lord chief justice, when he appoints the days of sittings at *Nisi prius*, and to make copies thereof, which are stuck up in the prothonotaries offices, and in *Westminster Hall*, to attend the court during the sittings, and draw out of the box the names of the jurors, and record their appearances and defaults, and return the same. To read the record, and all written evidence, and to take down the minutes of facts and enter the records in a book; record verdicts, return *Posteas*, and draw up orders of the court of *Nisi prius*, and make copies for each side, to attend with the jury to take a private verdict, and draw up and enter the same on the *Postea*, and make out copies thereof. And duty.

The office of marshal at *Nisi prius* in London and Middlesex is also in the nomination of the lord chief justice, and has been time immemorial granted by parol appointment, to hold during the pleasure of the lord chief justice. The present marshal is Stephen Hough, esq. Marshal at Nisi prius in London and Middlesex.
His appointment;

This officer is to attend the lord chief justice of this court, at all such times as his lordship sits to try issues depending in this court, by writ of *Nisi prius*, either in the county of Middlesex or city of London. He enters the names of all causes set down to be tried for the said city and county, in a book kept, And duty.

kept and provided by him for that purpose, which he carries down with him every day in term-time, to *Westminster*, that all attornies may have recourse to it to enter their causes, to inspect and see what causes are entered, and at proper times to enter *Ne recipiatur*; and in the afternoo[n] this book is kept at the lord chief justice's chambers for the same purpose. During the time appointed for trials in the said causes he personally attends the court during the whole time of their sitting, to receive the records and writs, and mark them. The marshal first calls the name of the cause, and then delivers up the record to the lord chief justice, and sits under him, to be ready, upon all occasions, to receive his commands, to receive and withdraw records and writs, and to mark any that are left untried, as *Remanets* to be tried at the next sitting.

Cryer at Nisi prius in London and Middlesex.

His appointment;

~~And duty.~~

The office of cryer at *Nisi prius* in *London* and *Middlesex* is also in the gift of the lord chief justice for the time being, and has been usually granted by parol appointment, to hold during pleasure. Mr. *Atis* is cryer to the present lord chief justice.

—His duty is to call the jurors, and swear them, and all witnesses produced on such trials.

Chief proclama-
mator.

His appoint-
ment;

Heneage Walker, esq; hereditary proclama-
mator of this court, granted to *John Walker*,
esq; the office of marshal proclama-
tor, and barrier of this court, with all fees, &c. to
hold to him and his heirs for ever. There
are four persons who act as cryers of the court,

one

one of which is also court-keeper, and another porter of the court: Which cryers, court-keeper, and porter, are deputies to the chief proclinator.

The duty of the proclinator and barrier *And duty.* is by himself, or deputies, to attend the court of *Commons Pleas* at *Westminster*, and make proclamations, &c.

The cryers are appointed by deputation *The four cryers* from the chief proclinator. *Their appointment ;*

Their duty is to attend the court, to administer the oaths to juries, witnesses, bails, and persons making affidavits; to hand rules and affidavits, &c. from the serjeants to the proper officers, to bring records into court as they are wanted, to call attornies on bills being filed against them, to take recoveries from the bar, and get them entered in the proper prothonotaries offices to which they belong, proclaim the essoins on the return-days, make proper adjournments, &c.

The court-keeper is appointed by the chief *Court-keeper.* proclinator. *His appointment ;*

His duty is to take care of the court, and *And duty.* that the tapestry and cushions be kept clean, the court washed, matted and cleaned, and to take care of the acts of parliament, and other books made use of in court.

The porter of the court holds his place *Porter of the court.* by the appointment of the chief proclinator. *His appointment ;*

His duty is to attend the judges in court, hang out of the fins every day, take care of *And duty.* them;

them; and to do other business as occasion requires.

Warden of the Fleet

His appointment;

And duty.

The warden of the *Fleet* prison is *John Eyles*, esq; appointed by letters patent to hold during pleasure.

His duty is to receive, and have the custody of all prisoners committed by this court to the *Fleet* prison.

Clerk of the papers and rules of the Fleet prison

His appointment;

And duty.

The present clerk of the papers and rules of the *Fleet* prison is Mr. *Low*, who holds his place by grant or appointment of the warden of the *Fleet*.

It is his business to receive and enter, in books kept for that purpose, the commitments of prisoners committed to the said prison by this court, to enter declarations delivered to the turnkey of the prison against prisoners, and to enter and file the discharges of prisoners, and to give certificates thereof, and return writs of *Habeas corpus*, and other writs directed to the warden, and enter the same in a book kept for that purpose, and also to give certificates of charges against prisoners, and certificates of day-rules granted to prisoners by the court.

Tipliffs.

Their appointment,

And duty.

There are two tipliffs attendant on this court, who are admitted by deputation from the warden of the *Fleet*.

They attend the judges whilst sitting in court, and in the afternoon at their chambers, and out of term they attend there morning and afternoon. One of them also attends the chief justice at the sittings of *Nisi prius* at *Westminster* and in *London*, and on the circuits. Their duty is to receive all prisoners

prisoners committed in court, or at a judge's chambers, and from thence to carry them to the *Fleet* prison, and deliver them to the turnkey there; and also to bring up prisoners to the court, or before a judge, on a *Habeas corpus*, or rule of court for that purpose.

The judges of this court, or any two of *Commissioners* them, ~~whereof~~ ^{for taking af-} the chief justice to be one, ^{fidavits, con-} shall and may, by one or more commission ^{cerning matters} or commissions, under the seal of this court, ^{in this court, to} from time to time, as need shall require, im- ^{be appointed by} power what and as many persons as they shall ^{the judges.} think fit and necessary in all and every the several shires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, to take and receive all and every such affidavit and affidavits as any person or persons shall be willing and desirous to make before any of the persons so impowered, in or concerning any cause, matter, or thing depending, or any wise concerning any of the proceedings in the said court, as masters of *Chancery* in extraordinary do use to do. And any judge of *And judge of* assize in his circuit may take and receive any *assize in his* affidavit or affidavits as any person or persons *circuit may* shall be willing and desirous to make before *take such affi-* him in or concerning any cause, matter or *dwit.* thing depending or in any wise concerning any proceedings in the said court: Which *Affidavit to be* said affidavits, taken as aforesaid, shall be filed *filed, and then* and then read and made use of in the said *read and used,* court to all intents and purposes as other af- *&c.* fidavits taken in the said court now are; and

all and every affidavit and affidavits, taken as
aforesaid, shall be of the same force as affida-

*Penalty of per- vits taken in the said court now are; and all
jury in such af- and every person and persons for swearing
fidavits.* him, her, or themselves in such affidavit or

affidavits, shall incur and be liable unto the
same penalties as if such affidavit or affida-
vits had been made and taken in open court.

Stat. 29 Car. 2. c. 5. §. 2.

*Fee for taking For the taking of every such affidavit, the
such affidavits.* person or persons so impowered and taking

the same, shall for so doing receive only the
sum or fee of 12 d. and no more. *Same*

Stat. §. 3.

*Commissioners The Justices of this court or any two of
for taking writs them, whereof the chief justice to be one,
in any suit in may by one or more commission or com-
this court, to missioners under the seal of this court, from
be appointed by time to time, as need shall require, impower
the judges.* such and so many persons, other than com-

mon attorneys and solicitors, as they shall
think fit and necessary, in all and every the
several shires and counties within the king-
dom of *England*, dominion of *Wales*, and
town of *Berwick upon Tweed*, to take and
receive all and every such recognizance or re-
cognizances of bail or bails, as any person or
persons shall be willing and desirous to ac-
knowledge or make before any of the per-
sons so impowered in any action or suit de-
pending in this court, in such manner and
form, and by such recognizance or bail piece
as the justices of this court have used to take
the same, which said recognizance or recog-
nizances of bail or bail-piece so taken as
aforesaid

*Recognizances
to be trans-
mitted to a
judge of the
court.*

aforsaid shall be transmitted to some or one of the justices of this court, who upon *Affidavit of* the due taking of the recognizance of such bail or bail-piece, by *the due taking, &c.* some credible person present at the taking thereof, such justice shall receive the same upon payment of such fees as have been usually received for the taking of special bails by the justices, clerks, and other the officers of this court; which recognizance of bail or bail-piece so taken and transmitted, shall be of the like effect as if the same were taken *de bene esse*, before any of the said justices; for the taking of every which recognizance *Fee for taking,* or recognizances of bail or bail-piece, the *&c.* person or persons so impowered shall receive only the sum or fee of 2 s. and no more. *Stat. 4 W. & M. c. 4. §. 1.*

The justices in this court shall make such *Judges to make* rules and orders for the justifying of such *rules for justifying, &c.* bails, and making the same absolute, as to them shall seem meet; so as the cognizor or cognizors of such bail or bails be not compelled to appear in person in this court to justify him or themselves: But the same may *The same to be by affidavit taken before a commissioner.* and is hereby directed to be determined by affidavit or affidavits taken before the said commissioners, who are hereby impowered and required to take the same, and also to examine the sureties upon oath touching the value of their respective estates; unless the *Unless, &c.* cognizor or cognizers of such bail do live within the cities of *London* and *Westminster*, or within ten miles thereof. *Same Stat. §. 2.*

Any

*Any judge of
assize in his
circuit may
take such bail.*

Any judge of assize in his circuit may take and receive all and every such recognizance and recognizances of bail or bails, as any person shall be willing and desirous to make and acknowledge before him, which being transmitted in like manner as aforesaid, shall (without oath) be received in manner as aforesaid, upon payment of the usual fees. *Same Stat. §. 3.*

*Acknowledging
bail in the
name of any
other not privy
or consenting,
felony.*

Every person who shall acknowledge, or procure to be acknowledged, any fine, &c. recognizance or recognizances, bail or bails, &c. in the name of any other person not privy or consenting to the same, and being thereof convicted, shall be adjudged to be a felon, and suffer death, &c. without benefit of clergy. *Stat. 21 Jac. 1. c. 26. 1 H. II. P. C. 696. Et vide Stat. 4 W. & M. c. 4. §. 4.* Whereby personating another before those who have authority by that act to take bail, so as to make him liable to the payment of any sum of money in that suit or action, is made felony.

Attornies of the court.

*No one to act
as an attorney,
unless served
five years
clerkship.*

BY the statute (a) 2 Geo. 2. c. 23. *sect. 5.* no person shall be admitted to act as an attorney, sue out any process, or defend any action in this court, unless he shall have been bound by contract in writing to serve as a

(a) Perpetuated by *Stat. 30 Geo. 2. c. 19. sect. 75.*
clerk

clerk for five years to an attorney duly admitted, as by the statute is directed, and for the said term of five years shall have continued in such service, and then be examined, sworn, admitted and inrolled.

If any attorney, with whom any person shall be bound by contract in writing to serve as aforesaid, shall die before the expiration of such five years; or if such contract shall by mutual consent be vacated, or such clerk be legally discharged by rule or order of court before the expiration of such five years, then if such clerk shall by (b) contract in writing serve as a clerk to some other attorney, admitted as aforesaid, during the remainder of the said five years, such service shall be as effectual as if he had served five years to the person to whom he was originally bound.

If his master shall die, or the contract be vacated, before the five years are expired, then to serve the remainder of the five years with another attorney.

Stat. 22 G. c. 46. sect. 9.

The judges, before they admit such person, are to inquire touching his fitness and capacity; and if thereby satisfied, and not otherwise, are to administer to him, in open court, the oath after mentioned, and cause him to be admitted an attorney, and his name to be inrolled, without fee or reward, except 1 s. for administering the oath. *Same Stat. sect. 6.*

Judges to examine his fitness and capacity before admission.

Mr. Rayner, in his readings on *sect. 11.* of this statute, says that Mr. Barrington's observation "that notwithstanding *stat. 4*

(b) Though without entering into any new articles,
Stat. 22 Geo. 2. c. 15. §. 15.

Hen. VI. chap. 18. it is not the modern practice to examine attornies before admittance," is not true, and asserts that no attorney is admitted at this day, without a previous (c) examination; but whether by virtue of 4 *Hen. VI.* chap. 18. or 2 *Geo. II.* chap. 23. he will not take upon him to say. *Rayn. Recd.* 2 *Geo. II.* chap. 23. p. 48.

The oath.

I *A. B.* do swear, That I will truly and honestly demean myself in the practice of an attorney according to the best of my knowledge and ability.

So help me God.

Id. sect. 1.

A Quaker on taking his solemn affirmation, may be admitted an attorney.

Any person being one of the people called Quakers, having served a clerkship with an attorney or solicitor, and being qualified as by statute 2 *Geo. 2. c. 23.* is required, may, on taking his solemn affirmation instead of the oath by the said act directed, before such judges, and others who are to administer the said affirmation, be admitted and intolled as an attorney or solicitor, as if he had taken the said oath. *Stat. 12 Geo. II. c. 13. §. 8.*

Attornies to be intolled.

The clerk of the warrants of the *Common Pleas* is, without fee or reward, to intol the

(c) The Judge inquires into the fitness of the attorney, by asking him a few trivial law questions, the answers to which, generally convince him of the abilities of the clerk, as much as reading the neck verse (formerly necessary, in order to obtain benediction of clergy) did convince the court and mankind of the learning of the culprit. *Rayn. Recd* 108.

name of every person who shall be admitted an attorney of this court, pursuant to this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided for that purpose, to which all persons shall have recourse without fee or reward.

Stat. 2. Geo. 2. c. 23. §. 18.

No attorney shall have more than two clerks at one and the same time, who shall be bound by contract in writing. *Same stat.*

No attorney to have more than two clerks at one time.

The prothonotaries of this court may have three clerks, and at one and the same time, and no more; and such clerks having served five years may be admitted, &c. in the same manner as any person may, who shall have served a clerkship to a sworn attorney for five years. *Same stat. §. 15.*

Prothonotaries may have three clerks.

Any person sworn, admitted, and inrolled an attorney of this court, with consent in writing, and in the name of any attorney of any other court of record at Westminster, &c. may sue out any writ, or commence or defend any action in such court, notwithstanding such person be not sworn or admitted an attorney in such court, *Same stat. §. 10.*

Attorney, with consent of attorney of another court, may practice in such court.

Attorney of C. B. may by this clause of the statute carry on proceedings in the court of great sessions of Wales, in the name of an attorney of that court, and declare for business and fees. *Barnes 160.*

If any sworn attorney of this court shall knowingly and willingly permit or suffer any other person to sue out any writ, or commence or defend any action, in his name, not being a sworn attorney or a sworn soli-

Attorney permitting those that are not, to act in his name, disabled to practice.

citor in *Chancery*, &c. and shall be thereof convicted, he shall, from the time of such conviction, be disabled to practice, and his admittance be void. *Same stat. §. 17.*

Attorney may be admitted a solicitor.

A sworn attorney of this court may be sworn; admitted and inrolled a solicitor in all or any of the courts of equity without any fee for the oath, or any stamp, if the master of the rolls, &c. shall, on examining, be satisfied that such attorney is duly qualified to be so admitted. *Same stat. §. 20.*

Attorney of the King's Bench not to be admitted of C. P. without a new stamp.

An attorney of the *King's Bench* applied in the treasury to be admitted an attorney of this court without stamps, but upon looking into the above statute of 2 *Geo. 2. c. 23.* wherein no provision is made for an attorney of one court to be admitted an attorney of another without duty, though there is a provision for solicitors of one court of equity, and for attornies to be admitted solicitors without duty, the judges refused to admit him without payment of the duty. *Barnes 38.*

2 Geo 2. c. 23. §. 20.

No attorney to commence any action for fees, &c. until a month after a bill delivered and signed.

No attorney of this court shall commence any action for recovery of any fees, charges, or disbursements, until one month after he shall have delivered to the party to be charged therewith, or left for him at his dwelling-house, or last place of abode, a (*d*) bill of such fees, charges and disbursements, in a com-

(*d*) That so the client may have an opportunity of looking into it before he is run to any further expence, *Pract. Reg. C. P. 36. Rep. & Cas. Pract. C. P. 27.* Taxation cannot regularly be applied for before bill delivered. *Barnes 36, 243.*

mon legible hand, and in the *English* tongue, (except law terms, and the names of writs) and in words at length (except times and sums) subscribed (e) with the proper hand of such attorney [since by *Stat. 12 Geo. 2.* a bill may be wrote with such abbreviations as are commonly used in the *English* language ;] and upon application of the party chargeable by such bill, or any other in that behalf authorised, unto any judge of the court, &c. where the business, or the greatest part thereof in amount or value was transacted ; and upon submission of the party, or other person authorised as aforesaid, to pay the whole, that upon taxation shall appear due to such attorney, the judge, &c. is required and impowered to refer the bill, and the whole of such attorney's demands thereupon (although no action be depending touching the same) to be taxed, without any money (f) being brought into court. And if the attorney, having due notice, shall refuse to attend such taxation, the officer may proceed *ex parte* (pending which reference no action shall be brought ;) and upon such taxation the party shall forthwith pay to the attorney the whole that shall be found due, and in default be liable to an attachment or process of

And on application of the party chargeable by such bill.
And submission to pay what shall appear due on taxation.
The bill to be referred to be taxed.
Without bringing money into court.
No action to be brought pending the reference.
On taxation the party as

(e) Co. Cas. 60.

(f) Lord chief justice *King* first introduced the practice of bringing money into court, because the party being stopped from suing at law, he thought it reasonable that the attorney should have security for his money : this was previous to this statute. See *Mosley* 68. pl. 40.

pay what shall be found due. contempt, or other proceeding at the election of the attorney. And if upon such taxation it shall be found, that such attorney has been overpaid, then the attorney shall forthwith

And if attorney found to be over paid ;

then to refund

pay to the party all such money as the officer shall certify to have been so overpaid ; and in default shall in like manner be liable to attachment, or process of contempt, or other proceeding, at the election of the party.

If bill taxed

be less by a

sixth than bill

delivered, the

attorney to

pay the costs of

taxation, alter

at the discretion

of the court.

Not to extend

to any bill of

fees between

one attorney

and another.

And the court is to award costs of taxation according to the event thereof, (*viz.*) if the bill taxed be less by a sixth part, than the bill delivered, the attorney is to pay the costs; if not less by a sixth part, the court at discretion shall charge the attorney or client according to the reasonableness or unreasonableness of the bill. *Same stat.* §. 23.

Nothing in the said act contained shall extend to any bill of fees, charges and disbursements, due from one attorney or solicitor to any other attorney or solicitor, or clerk in court, but every such attorney, solicitor or clerk in court, may use such remedy for recovery of his fees, charges and disbursements, against such other attorney or solicitor, as he might have done before the making the said act. *Stat.* 12. *Geo.* 2. *c.* 13. §. 6.

Not to convey-

ancing against

An attorney's bill for conveyancing business only, is not liable to be taxed otherwise than by a jury upon a *quantum meruit*. *Barnes* 41, 42. *Bul. Ni. Pri*

After an at-

torney's death

his bill is not to

be taxed.

After an attorney is dead his bill is not liable to be taxed. *Rep. & Cas. Pract. C.* P. 58. *Barnes* 42. *S. P.* 119, 122.

The court will not order that an attorney shall deliver his bill, and that the same shall be taxed, on one and the same motion, they being distinct matters, and the latter part may prove fruitless; the bill may be reasonable, and no occasion to tax it; the motion must be for the attorney to deliver his bill, and then, if there be occasion, the client may move to have it taxed; but the more usual way is to summons the attorney before a judge; and if the judge's order be disobeyed, to move the court, that the order may be made a rule of court, and then proceed to an attachment in case of further contempt.

Any person in his own name, or in the name of any other, suing out any writ, or commencing or defending any action, in any of the courts of law or equity, mentioned in the said act as attorney or solicitor, in expectation of any gain, fee or reward, without being admitted, shall forfeit 50*l.* to the use of the person who shall prosecute, and be made incapable to maintain any action for any fee, reward or disbursement, on account of prosecuting or defending any such action. *Any person practising as an attorney not being admitted forfeits 50*l.**
Stat. 2 Geo. 2. c. 23. §. 24.

No attorney who shall be a prisoner in any gaol or prison, or within the limits, rules or liberties of any gaol or prison, shall, during his confinement, in his own name, or the name of any other, sue out any writ or process, or commence or prosecute any action or suit, and all proceedings in such action or suit shall be void and of no effect; *No attorney being a prisoner to commence or prosecute any action.*

Such attorney to be struck off the roll.

and such attorney so commencing or prosecuting any action or suit as aforesaid, shall be struck off the roll, and be incapacitated from acting as an attorney for the future; and any attorney permitting, and empowering any such attorney as aforesaid, to commence or prosecute any action or suit in his name, shall be struck off the roll, and be incapacitated from acting as an attorney for the future. *Stat. 12 Geo. 2. c. 13. §. 9.*

As also any other attorney permitting such attorney to use his name.

Not to extend to suits commenced before the confinement of such attorney.

This not to extend to prevent any attorney so confined as aforesaid, from carrying on or transacting any suit or suits commenced before the confinement of such attorney. *Same Stat. §. 10.*

Suing on a bail bond given in an action commenced before the imprisonment, is but a continuance of the original suit.

After an action commenced by an attorney he becomes a prisoner, then the bail bond is assigned, and he, being still a prisoner, commences an action on the bail bond; this has been held to be a continuance of the original suit commenced before the attorney became a prisoner. *2 Barnes 40.*

Attorneys prisoners may defend, tho' not prosecute suits.

It has also been held, that the above act, disqualifying attorneys who are prisoners from practising, relates only to the prosecuting, and not to the defending suits. *Barnes 263.*

Every person bound clerk to cause an affidavit to be made of the execution of the articles, specifying the names and places of abode of the parties, date, &c.

Every person, who after 1 July 1749, shall be bound by contract in writing to serve as a clerk to any attorney of this court, as by *Stat. 2 Geo. 2.* is directed, shall within three months after the date of such contract, cause an affidavit to be made of the actual execution of such contract by such attorney, and the person so bound, specifying the name of such attorney, and of the person so bound, and

and their places of abode respectively, together with the day of the date of such contract; and such affidavit shall be filed within the time aforesaid in this court, with the officer after mentioned, or his deputy, who shall make and sign a memorandum or mark of the day of filing such affidavit, at the back or bottom thereof. *Stat. 22 Geo. 2.*

c. 46. §. 3.

No person shall be admitted an attorney before such affidavit so marked shall be produced, and openly read in court. *Same stat. §. 4.*

In this court the clerk of the warrants, or his deputy, shall be the proper officer for filing such affidavits. *Same stat. §. 5.*

And shall keep a book, wherein shall be entered the substance of such affidavit, specifying the names and places of abode of every such attorney and clerk, and of the person making such affidavit, with the date of the contract, and the days of making and filing such affidavit, and may take, at the time of filing such affidavit, 2 s. 6 d. for his aforesaid trouble, which book may be searched gratis. *Same stat. §. 6.*

No attorney shall have, take, or retain any clerk, who shall become bound by contract in writing as aforesaid, after such attorney shall have discontinued or left off, or during such time as he shall not actually practise as, or carry on the business of an attorney. *Same stat. §. 7.*

L. had served an apprenticeship to G. a scrivener in the city, and also a sworn attorney of the court of Common Pleas: By the

Affidavit to be filed, and the day of filing marked thereon.

No person to be admitted an attorney, till affidavit read in court.

Clerk of the warrants to file such affidavits, and enter substance thereof in a book.

Fee 2 s. 6 d. for his trouble. Book to be searched gratis.

No attorney to take such clerk after he has discontinued business.

Service to a scrivener also an attorney not good.

tenor of the articles G. covenanted to instruct L. in the art and mystery of a scrivener; and it appeared that G. during the term of five years specified in the articles, had never practised as an attorney, but acted as a scrivener only. Application was made to the lord chief justice, and in the treasury, that L. might be sworn an attorney, which was refused, he not having served as clerk to an attorney; but as apprentice to a scrivener.

N. B. There was formerly the same determination in the case of a young man who had served Mr. Metcalfe, an attorney and scrivener in Wood-street; Metcalfe, during the term of five years specified in the indentures of apprenticeship, practised in both capacities; but the covenant in the articles being to instruct the apprentice in the art of a scrivener only, the judges refused to admit him as an attorney. *Bornes* 59, 40.

Every person so bound, to be during the whole time actually employed by such attorney.

Every person bound by contract in writing to serve any attorney as by the said act is directed, shall during the whole time and term of service specified in such contract continue, and be actually employed by such attorney, or his agent, in the proper business, practice or employment of an attorney. *Same stat.* §. 8.

If before the expiration of the time the attorney die, &c. or the clerk be discharged by, &c.

Provided if any such attorney, to or with whom any such person shall be so bound, shall happen to die before the expiration of such term, or discontinue or leave off his practice, or if such contract shall by mutual consent of the parties be cancelled, or such clerk shall be legally discharged by rule of the court before

before the expiration of such term, and the said clerk shall in any of the said cases be bound by another contract or contracts in writing to serve, and shall accordingly serve in manner beforementioned, as clerk to any other such practising attorney or attorneys as aforesaid, during the residue of the said term of five years, such service shall be deemed and taken to be as good, effectual and available, as if such clerk had continued to serve as a clerk for the said term, to the same person to whom he was originally bound, so as affidavit be duly made and filed of the execution of such second contract or contracts, within the time and in like manner, as is before directed concerning such original contract. *Same stat. §. 9.*

Every person who shall become bound as a clerk as aforesaid, shall, before he be admitted an attorney, cause an affidavit of himself, or such attorney to whom he was bound as aforesaid, to be duly made, and filed with the officer before appointed, that he hath actually and really served and been employed by such practising attorney, to whom he was bound as aforesaid, or his agent during the said whole term of five years. *Same stat. §. 10.*

If any sworn attorney shall act as agent for any person or persons not duly qualified to act as an attorney or solicitor as aforesaid, or permit or suffer his name to be any ways made use of upon the account, or for the profit of any unqualified person or persons, or send any process to such unqualified person

to enable him to appear or act as an attorney, to be struck off the roll.

And the unqualified person to be committed

None but attorneys to practise at general or quarter-sessions.

son or persons, thereby to enable him or them to appear, act or practice in any respect as an attorney or solicitor, knowing him not to be duly qualified as aforesaid, and complaint shall be made thereof in a summary way to the court, from whence any such process did issue, and proof made thereof upon oath to the satisfaction of the court, that such sworn attorney had offended therein as aforesaid, then every such attorney so offending shall be struck off the roll, and for ever after disabled from practising as an attorney or solicitor; and in that case, and upon such complaint and proof made as aforesaid, it shall be lawful for the said court to commit such unqualified person, so acting or practising as aforesaid, to the prison of the said court, for any time not exceeding one year. *Same Stat. §. 11.*

No person shall act as a solicitor, attorney, or agent, or sue out any process at any general or quarter-sessions of the peace, either with respect to matters of a criminal or of a civil nature, unless such person shall have been heretofore admitted an attorney of one of the courts of record at *Westminster*, and duly inrolled pursuant to *Stat. 2 Geo. 2. c. 23.* or be hereafter admitted an attorney and inrolled as aforesaid, pursuant to this act, or such other law as shall be then in being, and unless such person shall continue so entered on the roll at the time of such his acting in the capacity aforesaid; but every person, who shall so act, not being admitted and inrolled as aforesaid, shall be subject to a penalty

penalty of 50*l.* to be recovered by action of *under penalty*
debt, bill, &c. by any person, who shall *of 50*l.**
sue for the same, within 12 months after the
offence committed, with treble costs of suit.

And if any attorney shall permit any person, *No attorney*
not being admitted and inrolled as aforesaid, *to permit an*
to make use of his name in the courts of *unqualified*
general or quarter-sessions as aforesaid, such *person to use*
attorney shall be subject to the like penalty *his name at*
of 50 *l.* to be recovered in manner aforesaid. *the sessions un-*
der the like
penalty.
Same stat. §. 12.

By *stat. 2 Geo. 2. c. 23. §. 22.* "Every *Name of at-*
process for arresting, and every writ of exe- *torney to be*
cution, or some label annexed, and every war- *written on*
rant upon such process, shall, before service *every writ.*
or execution, be subscribed or indorsed with
the name of the attorney, clerk in court or
solicitor, by whom such process, &c. shall
be sued forth; and where such attorney, &c.
shall not be the person immediately employ-
ed, then also with the name of the attorney
so immediately employed: and every copy of
any writ served upon any defendant shall be-
fore service be subscribed with the name of the
attorney immediately employed."

Motion to stay proceedings, because the *No attorney's*
copy of the writ with which the defendant *name to copy of*
was served, had not attorney's name to it. *writ.*
Pratt. Reg. C. P. 440.

Rule to shew cause why proceedings *Proceedings not*
should not be discharged with costs. The *to be discharge-*
objection was, that no attorney's name was *ed, the attor-*
set to the sheriff's warrant as required by act *ney's name is*
of parliament; but by the court; the warrant *not to the she-*
is not void, the act of parliament is directory *riff's warrant.*

only; the sheriff is blameable, but the party must not suffer for his default. *Barnes* 412. *Pract. Reg. C. P.* 441.

Attorney's name to the writ, tho' not to the warrant, sufficient.

Motion that proceeding might be stayed, the attorney's name not being to the warrant made by the sheriff, tho' it was to the writ on which the warrant was made. Rule to shew cause. The court (*Portescue A.* absent) said, that as the attorney's name was to the writ, it was sufficient, but that till the *Stat. 12 Geo. 2. c. 13.* the not inserting the name of the attorney in the warrant was bad, and thought some former determinations on this head, not declaring the process void, were quite wrong. *Pract. Reg. C. P.* 442.

Writ not void tho' without an attorney's name.

Motion to stay proceedings because no attorney's name was set to the writ, denied. *Barnes* 457. *Pract. Reg. C. P.* 441. *Rep. & Cas. Pract. C. P.* 102.

Process delivered without filacer's name.

Motion to stay proceedings upon process delivered without *Filacer's* name being put thereto; court said the act of parliament did not require it; so no rule was granted. *Rep. & Cas. Pract. C. P.* 106.

Provided that nothing herein contained shall extend to deprive the attornies of the dutchy of *Lancaster*, or of the courts of great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster* and *Durham*, from acting within their respective jurisdictions. *Same Stat. §. 13.*

By statute *17 Geo. 3. c. 37.* further time is given for the filing affidavits of the execution of contracts of clerks to attornies, to *Mich. term. 1777.*

An attorney that has not been attending ^{*Attorney not attending, &c. to have no privilege.*} his employment in this court by the space of one year, unless hindered by sickness, shall not be allowed his privilege of an attorney.
Mich. 1654.

It is observable, that the above rule or or- ^{*Observations on rule of Mich. term, 1654, touching the privilege of an attorney being free from arrest.*} der of court, was made in times very unfavorable to personal as well as public liberty, though that specious pretence was given out and received as the sole motive for causing that extraordinary *Epocha*, in the history of this country, called the usurpation.

A rule therefore made at such a period of anarchy and lawless confusion ought not, in my humble opinion, to be considered as sufficient authority, or indeed as any authority at all, much less as the ground and reason for over-ruling the privilege in question; will it not be too much to establish this remnant of lawless power, unsanctified by any subsequent act, either of a court of justice, or of the legislature, (without one or other of which authorities, I believe it will be difficult to produce an approved precedent of any rule, order, act, judicial or legal, being adopted, or even countenanced by courts of justice at this day, especially in a matter of personal privilege, and such two as may eventually affect the property or interest of every individual subject of this kingdom.)

And indeed at the time, when the above old and disused rule was considered as authority, it seems to have militated, even then, with a much more superior authority, viz. *Stat. 1 Hen. V. chap. 4.* whereby no under-
sheriff

Sheriff may practice as an attorney, during his employment in the said office, upon pain of exclusion, from being an attorney, and from being re-admitted ever after.

So that if a gentleman of the profession acts now-a-days as under-sheriff, he runs the risque of not only being struck off the roll of attornies, but also of being precluded of all possible chance of being restored, at any future period of his life, by any means whatever; for if he does practice within the year of his being under-sheriff, *stat. Hen. V.* obliges the judges to strike him off the roll; and if he does not practice for a year, they declare themselves authorized so to do, by the practice of the court, under the above old, disused, and I may add, abused rule of 1654.

The judges in the time of prince's *Elizabeth*, that glorious queen of *England*, were of opinion, that as long as an attorney remains such on record, though he does not alledge in his plea of privilege, that he has any clients, or that he prosecutes or defends any causes, at the time of an action being brought against him, and wherein he is arrested, he ought to have, and be allowed his privilege; for if he is not qualified to be an attorney, the court will strike him off the roll, on motion, and cause shewn, that he ought so to be. See *Lutw.* 1667. and the term of a writ of privilege for an attorney, in *Rast. Entr.* 469. b.1

The whole court of common pleas, during the time Lord *Camden* presided therein,

were unanimously of the above opinion, for the same reason; and therefore allowed an attorney of that court his privilege of freedom from arrest, in a civil suit, on its being verified to the satisfaction of the court, that his name remained of record, on the roll of attorneys of that court, as an attorney thereof.

No attorney to be lessee in an ejectment, nor bail for a defendant in this court. *Mich. Not to be lessee in ejectment nor bail.* 1654. *M. 6 Geo. 2.*

No person without rule of court, or order of a judge or prothonotary, and notice to the adverse party or his attorney, shall change or shift his attorney; and such attorney newly coming in to take notice at his peril of the rules whereunto the former attorney was liable, had he continued. *No changing attorney without rule or order. Mich. 1654.*

The court will not permit an attorney to be changed in a cause, and another attorney appointed in his stead, till his bill of fees and disbursements be settled and paid. *And his bill paid. Barnes 40.*

No attorney, without leave of the court, shall shift from the prothonotary's office where first sworn and settled; and no prothonotary shall suffer such attorney to enter any of his causes in his office contrary to his rule. *Attornies not to shift from one prothonotary's office to another. Trin. 21 Car. 2.*

But see now the following rule.

In the Common Pleas.

Trinity Term 10 Geo. III.

WHEREAS William Mainwaring esq; chief prothonotary, John Floyer and Anthony Dickins esqs; the two other prothonotaries

notaries of this court, have agreed, that the fees, perquisites and profits, arising from the business transacted in their respective offices, except certain peculiar fees belonging to the chief prothonotary, shall be equally divided between them, and have proposed, that their said offices shall be carried on in one place, and as one office; and *Henry Fotbergill*, *Henry Paramor*, and *Henry Barnes*, the secondaries to the said prothonotaries, have come to the like agreement with respect to the fees, perquisites, and profits of their respective offices (except certain peculiar fees belonging to the secondaries to the chief and second prothonotaries) and have proposed, that their said offices shall be carried on in one place, and as one office, in case this court shall approve the said agreements and proposals; and the right honourable the earl of *Litchfield*, as *custos brevium* of this court, hath signified his assent thereto, and this court having taken the premises into consideration, and being of opinion that the same will be for the advantage of the suitors, doth approve the said agreements and proposals, and think fit and order, that the same be carried into execution; and that from and after the feast of *All Souls* next, the names of the respective prothonotaries as heretofore severally put upon proceedings in the said court, be omitted, and such proceedings be only intituled "In the *Common Pleas*," and that any of the said three prothonotaries shall and may proceed on and determine all or any references and benefits of this court, which
ought

ought to be transacted by the prothonotaries thereof, unless this court shall give particular directions concerning the same.

The clerk of the warrants to certify to the seal office, the names of such attornies that have discontinued, and are forejudged the court, and put out of the roll, and have not filed any warrants of attorney, nor continued their names upon the roll for above four terms past; and thereupon no such person shall have a writ of privilege or attachment sealed until they have the said writ signed by the clerk of the warrants, to testify that their names are on the roll, for which no fee is to be paid. *Trin. 29 Car. 2.*

And now the sealer does not put the seal to any writ of privilege or attachment before it is marked by the clerk of the warrants.

An attorney has the privilege of suing by attachment of privilege, and of being sued by (b) bill in manner herein after mentioned. To this privilege there are some exceptions, as 1. At the king's suit, (but in a *qui tam* he has his privilege.) 2. In a real action. 3. Where he sues, or is sued, in *auter droit* as heir, executor or administrator. 4. Where he joins, or is joined with another. 5. Where there is not the same remedy in this court, as in the case of a foreign attachment in London. 6. When he is sued by an attorney of another court, viz. an attorney of

(b) Though demanded under 40s. Barnes 158, 159.
2 Wils. Rep. 44.

this court sued by an attorney of *B. R. et vice versa*, for the general rule is, that privilege takes away privilege; but then it ought to be for a debt really due, and not on a note colourably indorsed without consideration, in order to deprive the defendant of his privilege; for this is an abuse of privilege in the plaintiff, who thereby becomes unworthy of any privilege. *Barnes* 44. If an attorney of one court hath cause of action against another attorney of the same court, he ought to sue by bill, and not by attachment of privilege; for it seems needless to send a writ to the sheriff to bring in a defendant, who is presumed to be standing at the plaintiff's elbow in his own court.

Attorney of *Common Pleas* by entering into a bail bond in an action in *B. R.* waves his privilege of being sued in *C. B.* *Barnes* 117.

Attorney not bound to serve in the militia.

nor constable, &c.

On hearing counsel for Mr. *Heaton*, an attorney *C. B.* and for the deputy lieutenancy, the court granted a writ of privilege to excuse Mr. *Heaton* from serving in the militia of the city of *London*, the service being personal. *Micb.* 14 *Geo.* 2. *Barnes* 42. Privilege from serving the office of constable; though there be a custom for persons to be chosen into that office in respect of their estates, or otherwise, for no custom shall be intended to be more antient than that of this court. *Cro. Car.* 283, 389. *Noy* 112. *March* 30. 1 *Mod.* 13. 1 *Vent.* 16, 29. 2 *Keb.* 477, 508. 1 *Lev.* 265. *T. Raym.* 179. For privilege in other respects, see

Townsend's

Townsend's Tables 452, 453. *Cornwall's Tables* 432, 433.

All attornies of this court, should be admitted of some inn of court, or *Chantry*, *admitted of* and take chambers there, (if they conveniently may be had) else lodgings in some *some of the inns of court.* convenient place near the said inns, and leave notice in writing with the butler or porter of such inn where their lodgings are, except *Except.* such attornies, who are inhabitants or housekeepers in *London, Westminster, Southwark,* or the suburbs thereof, and liberty of the *Tower of London, and St. Katharine's;* or are attornies of any courts within the said cities, town and liberty. *Mich. 1654. Trin. 29 Car. 2. Mich. 4 Annæ.*

Clerk of the warrants is to cause an alphabetical book to be prepared and kept in his office, for inspection *gratis*; wherein every practising attorney, resident in *London or Westminster,* or within ten miles thereof, shall have his name and place of abode, or some place within the said cities, or one of them, where he may be served with the proceedings of court: and if copy of such as do not require personal service, be left at place *last (i)* entered, with any person there; that shall be deemed good service. *Hilary 9 Geo. III.*

(i) If no entry be made, fixing up any of the said proceedings, in the Prothonotary's office, No. 2. *Tanfield Court, Inner Temple,* (unless *personal service* be required) shall be deemed sufficiently served. Same rule.

Each attorney pays 8d. a term to the clerk of the warrants.

Every attorney of the court pays to the clerk of the warrants 8d. a term, viz. 4d. a term for the puisne judges (to be distributed in charity) and 4d. a term for the cryers of the court. And when any attorney brings a writ of privilege or attachment to be marked, or warrant of attorney to be filed, he must pay the arrears (if any) of his termage.

Attorney re-Florida, who had been struck out of the roll at his own request.

Mr. Mosdy, an attorney of Hampshire, having at his own request been struck out of the rolls of attorneys, was, upon his own motion in the treasury chamber, and producing an affidavit of his reasons, restored to the office and privilege of an attorney, he consenting not to take advantage of his privilege against any action then depending against him, if there was any. *Trin. 16 Geo. 2. Barnes 42, 43.*

Attorney answerable for his agent.

A country attorney is answerable to his client for his agent. *Barnes 37.*

Matters not to be transacted in the country.

Where country attorneys are concerned, declarations, pleas, and other proceedings, should not be delivered and carried on in the country, but by the agents in town.

Declaration.

If a rule be given to declare, and the plaintiff's attorney in the country agrees that a demand of the declaration may be made on him in the country, which is accordingly done, and a *Non-pros* signed for want of a declaration, the *Non-pros* is irregular, and may be set aside; for by the practice of the court, the declaration should have been demanded of the agent in town.

If the agent of the plaintiff's attorney *Plea.* gives the agent for the defendant time to plead, the country attorney cannot sign judgment till that time be expired.

A plea delivered in the country is irregular, and judgment may be signed. See *Barnes* 251.

If the country attorneys agree that the issue *Issue.* shall be delivered in the country, and it is notwithstanding tendered in town, and not paid for by the agent, judgment may be signed, for the agreement is void. *Barnes* 251.

But where the defendant pleads by his attorney in the country, and the plaintiff's attorney accepts it there, he may tender the issue in the country, and if not paid for there, may sign judgment. *Issue.*

Notice of trial must be given in town, *Notice of trial.* but a countermand may be given in the *Countermand.* country.

In order to be admitted an attorney, you must make an affidavit of having faithfully served your time out; having done this, or indeed before, take that part of the articles executed by your master, to one of the judges chambers, who will (k) examine whether you are qualified to be admitted; you must get the deputy clerk of the warrants N^o. 6. *Clifford's Inn*, to attend the judge with the original affidavit of the due execution of your articles. Some morning in

(k) See *Ante* 37.

term time attend *Westminster* hall to be sworn; this done get your admission engrossed on a treble 40s. stamp piece of parchment, signed by the judge who examined you. The expences out of pocket are about seven guineas: See *Rayn. Read. on Stat.* 4to. p. 108.

Sheriffs.

AS they are bound to execute the process of the court, and punishable by the court for misbehaviour in executing the same, they are generally esteemed and looked upon as officers of the court.

Every sheriff to make a deputy on record in court.

Every sheriff shall make yearly a deputy on record, in the *Chancery*, *King's Bench*, *Common Pleas*, and *Exchequer*, before they shall return any writs, to receive all manner of writs and warrants delivered to them. *Stat.* 23 *H. 6. c.* 10.

Every sheriff is to make and enter on record a deputy to receive all manner of writs and process. *Micb.* 1654. *Hill.* 14, 15, and *Hill.* 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2, *Com. Rep.* 566. pl. 213.

Deputy to have his name and place of abode in London or Westminster sit up in the office of the clerk of the warrants.

Each deputy yearly to have his name and place of residence in *London* or *Westminster*, set up in the office of the clerk of the warrants. *Micb.* 1654.

To give his attendance in Westminster

Sheriffs deputies are to give their attendance in *Westminster-Hall* daily in term-time, that

that they may with more conveniency dis-^{Hall in Term}
patch the duty belonging to their respective ^{time.}
offices. *Mich.* 1654. *Hil.* 14 & 15 and
Hil. 15 & 16 *Car.* 2. *Trin.* 1 *Jac.* 2.

Sheriffs are not to deliver out any warrants ^{Sheriff's not to}
before the writs be sued forth and delivered ^{deliver out}
to them. Nor deliver out any blank war-^{warrants be-}
rants. *Mich.* 1654. *Hil.* 14 & 15 *Car.* 2. ^{fore writs de-}
Trin. 1 *Jac.* 2. ^{livered to them,}
^{or blank war-}
^{rants. Stat 43 Eliz. c. 6. 6 Geo. 1. c. 21.}

No under-sheriff to practice as an attorney ^{No under she-}
during such his employment. ^{riff to practice}
4. *Mich.* 1654. *Stat.* 22 *G.* 2. c. 46. § ^{as an attorney.}
14.

The sheriff, for serving any execution ^{Sheriff's fees}
upon the body, lands, goods or chattels, ^{on executions.}
shall have 12 *d.* in the pound where the sum
exceeds not 100 *l.* and if it does exceed, then
6 *d.* for every pound exceeding 100 *l.* that he
shall levy, or take the body in execution for.
(*l*) *Stat.* 29 *Eliz.* c. 4.

This act shall not extend to *poundage* on
Ca. Sa. at the suit of any sheriff, or other
crown officer upon bail bond on prosecution
for duties to the king, or penalty for pre-
venting clandestine running or receiving pro-
hibited goods, or where poundage would not

(*l*) This printed statute is wrong, for the parliament
was held 28 *Eliz.* 7. *Raym.* 1. *Pl. Com.* 303. *Annot.*
294. *pl.* 303. 2 *Mod.* 242. *Lutw.* 203, 1117. *Skinn.*
364.

be due, if proceedings were carried on in name of the crown. 7 Geo. III. chap. 29.

On writ of Possession.

On executing a writ of *Habere facias possessionem*, the sheriff shall not take above 1s. in the pound, where the rent exceeds not 100*l.* per annum; and 6*d.* in the pound for every pound over and above. *Stat.* 3 Geo. 1. c. 15. §. 16.

On Capias ad satisfaciendum

On executing a *Capias ad satisfaciendum*, the sheriff to take poundage only for the real debt, on penalty of treble damages, and 200*l.* The real debt to be mark'd on the back of the writ. *Same stat.* §. 17.

Sheriffs to indorse attorney's name on warrants.

Every sheriff, or other officer who shall make out any warrant upon any writ, process or execution, and shall not subscribe or indorse the name of the attorney who sued out the same, shall forfeit the sum of five pounds, to be assessed as a fine upon such sheriff or other officer, by the court; one moiety to the king, the other moiety to the party aggrieved by such omission. *Stat.* 12 Geo. 2. c. 13. *Stat.* 2 Geo. 2. c. 23. §. 22.

Sheriff not returning process within 6 days after service of rule, to pay costs.

If any sheriff, under-sheriff, or their deputy, bailiff, coroner, bailiff of any liberty, or other officer having the return of process, shall not return the same, or bring in the body within four days after, *Barnes*, 102. See *Id.* 400. *H.* 7 Geo. III. *Barnes* 494, after service of a rule of this court for that purpose, he shall be liable to pay the costs occasioned by such neglect. *Hil.* 8 G. 1.

Service on the under-sheriff sufficient.

Service of the rule on the under-sheriff, or on one who really acts as under-sheriff, though he be not under-sheriff, is sufficient

to ground attachment against the sheriff.

Barnes 405.

When a new sheriff is chosen, yet the old sheriff continues sheriff of the county till the new sheriff is sworn, and he receives a writ of *Supersedeas*.

On the decease of any sheriff the under-sheriff is to act in his name till another be appointed. *Stat. 3 Geo. 1. c. 15. §. 8.*

The sheriff of every shire, being no city or town made a shire, within which there is any franchise or liberty, the lord whereof is intitled to the return of writs, shall (if required by such lord) within one month after such request, nominate and appoint one or more deputy or deputies, at the costs of such lord, to be resident at some town or place in or near such franchise or liberty, to be appointed by the lord chancellor and chief justice of B. R. and C. B. or one of them hereby authorised to appoint such town or place, and to settle what costs shall be paid therefore by such lord; and such deputy or deputies shall reside at such town or place so to be appointed, and have authority in the sheriff's name to receive and open all such writs and process (the execution or return whereof doth belong to the lord of such franchise or liberty), and in the name and under the seal of the sheriff, to issue out such warrant or warrants to such lord as by law is requisite for the due execution of such writ or process; and such deputy or deputies is and are required, on tender of such writ or process, to receive and open the same, and

Old sheriff to continue till new one sworn.

On the death of a sheriff the under sheriff to act till a new one appointed.

Sheriff, on request and cost of a lord of a franchise or liberty, to appoint a deputy to reside at

some place in or near the franchise.

Place and costs to be appointed and settled by lord chancellor, &c.

Deputy to receive writs, and in name and under seal of sheriff to issue warrants to the lord of the franchise.

*Taking no more
than the ac-
customed fees.*

*Punishment of
sheriff or depu-
ty making un-
lawful arrest.*

issue such warrants thereon without delay, in such manner and form as the sheriff may or ought to do, without taking any further fee than now due and accustomed for such warrant; on pain that every such sheriff or deputy guilty of any wilful neglect or default shall be punished as for a contempt of court, and make satisfaction to the party damaged. *Stat. 13 Geo. 2. c. 18.*

High sheriff can appoint no more than one under sheriff extraordinary. *2 Wils. 378.*

*Sheriff by in-
denture and
schedule to
turn over all
writs, &c. to
his successor.*

*Or make sa-
tisfaction to
party injured*

All sheriffs of any county, city, liberty, division, town corporate, or place, shall, at the expiration of their office, turn over to the succeeding sheriff, by indenture and schedule, all such writs and process as shall remain in their hands unexecuted, who shall duly execute and return the same; and in case any such sheriff shall refuse or neglect to turn over such process, in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction, by damages and costs, to the party aggrieved, as he, she, or they, shall sustain by such neglect or refusal. *Stat. 20 Geo. 2. c. 37.*

*Sheriff not
liable to re-
turn any writ,
unless required
within 6
months after
expiration of
his office.*

No sheriff shall be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his said office. *Same Stat.*

Of the four terms.

THERE are four terms in the year, *The four terms.* during which this court sits, viz. *Michaelmas* term, *Hilary* term, *Easter* term, and *Trinity* term; the two first are call'd fix'd *Fixed and* terms, as constantly falling on certain fix'd *moveable* days in the year, the two latter terms are *terms.* called moveable terms, *Easter* term being governed by *Easter* day, and *Trinity* term being governed by *Corpus Christi* day, both which are moveable feasts. *Hilary* and *Trinity* terms are called *Issuable terms.* for that in them issues are made up for trials at *Infr. cler. 21,* the assizes which respectively follow those *22.* terms.

Michaelmas term begins on the sixth of *Michaelmas* *November*, if not *Sunday*; if *Sunday*, on *term.* the seventh (its *essoins*-day being the third day of *November*: The morrow of *All Souls*) and ends on the twenty-eighth day of *November* if it be not a *Sunday*, but if a *Sunday*, then on the morrow following. This term, before the statute 16 *Car. 1. c. 6.* began on the ninth day of *October*, and had eight returns, which by that statute are reduced to six, and before the *stat. 24 Geo. 2. c. 48.* began on the twenty-third day of *October*, and had six returns, which by that statute are reduced to four.

*Hilary term.**See Spelm.**Rem 82.**Infr. cler. 21.*

Hilary term begins on the twenty-third day of *January* (except it be on a *Sunday*, and then on the morrow after) being always that day eightth weeks on which *Michaelmas* term ended, its effoin day being the twentiethth of *January*, and it ends on the twelfth day of *February* (if not *Sunday*, and then on the morrow after) being always the same day of the week on which *Michaelmas* term began.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm Rem. 86.*

*Easter te. m.**Infr. cler. 21.*

Easter term begins on the *Wednesday* fortnight after *Easter-day*, its effoin-day being the *Sunday* next preceding, but held on the *Monday*, and ends on the *Monday* next after *Ascension day*.

In the *Exchequer* it begins eight days before the full term in the other courts. *Spelm Rem. 86.*

Trinity term.

Trinity term begins on the *Friday* next after *Trinity Sunday*; and though that day should happen to be the feast of *St. John the Baptist*, the term must then begin, for by the *stat. 32 H. 8. c. 21.* the full term shall begin on the *Friday* next after *Corpus Christi day*; the effoin-day is the *Monday* preceding. It ends on the *Wednesday* fortnight after it began, except it happen on the twenty-fourth of *June*, being the feast of *St. John the Baptist*, and then it must be adjourned on the *Tuesday* to the *Thursday* following. This term was limited and settled as it now is,

is, by the said *stat. 32 H. 8.* it having before more returns, and a different commencement.

In the *Exchequer* it begins four days before the full term in the other courts. *Spelm. Rem. 86.*

The *essoine-day* (from *essoine*, or *exonnie*, *Essoin-day*. an *excuse*, where the defendant cannot conveniently appear) is said to be the first day of the term, and on that day one of the judges goes down to *Westminster* for the keeping *essoins*, *profers*, *returns*, &c. But full term begins always the fourth day after inclusive, except in *Trinity* term, when it begins on the fifth, by reason of *Corpus Christi* day, which is *dies non juridicus*.

The *essoin-day* is the first day of term, but in common parlance the first day the court sits is the first day of the term; so where promise was made, the day after the *essoin-day* of *Trinity* term, to deliver an indenture before the end of the *Trinity* term next, adjudged he must do it the same term, not that time twelve months. *Bishop and Hartcourt, Cr. El. 210. pl. 6. Sav. 124. Ander. 240. pl. 256. Leon. 210. pl. 295. 5 Rep. 37. 2 Danv. Abr. 9. id. 225. pl. 12. 3 Dauv. Abr. 46. pl. 1.*

On a writ of adjournment nothing can be done at the day but to read the writ, and adjourn all appearances and proceedings till the day appointed, and no appearance can be made, or other matters done then, and because

Writ of adjournment.
Cro. Jam. 445, 446.

cause an imparlance was entered as on that day, it was held error.

Judgment.

A judgment relates to the effoin-day, which is the first day to law, and not to the *Quarta die post*, which is but a day of grace; *ideo* a judgment of *Hilary* term had precedence to a statute acknowledged. 22 *Jan. Stamford* and *Cooper, Cr. Car.* 102. *Hel.* 72. *Ilut.* 95. 1 *Rep.* 94.

Michaelmas

Michaelmas term, which contains three weeks and two days, hath four returns.

By *O R I G I N A L*.

1. On the morrow of *All Souls*.
2. On the morrow of *Saint Martin*.
3. In eight days of *Saint Martin*.
4. In fifteen days of *Saint Martin*.

By *ATTACHMENT, BILL, &c.*

- | | |
|------|---|
| On (|) next after the morrow of
<i>All Souls</i> . |
| On (|) next after the morrow of
<i>St. Martin</i> . |
| On (|) next after eight days of
<i>St. Martin</i> . |
| On (|) next after fifteen days of
<i>St. Martin</i> . |

Hilary term, which contains three weeks complete, hath four returns.

By ORIGINAL.

1. In eight days of Saint *Hilary*.

2. In fifteen days of Saint *Hilary*.

3. On the morrow of the purification of the blessed *Mary*.

4. In eight-days of the purification of the blessed *Mary*.

By ATTACHMENT, BILL, &c.

On () next after eight days of Saint *Hilary*.

On () next after fifteen days of Saint *Hilary*.

On () next after the morrow of the purification of the blessed Virgin *Mary*.

On () next after eight days of the purification of the blessed Virgin *Mary*.

Easter

Easter term, which contains three weeks and six days, hath five returns.

By *ORIGINALLY*
 1. In fifteen days of *Easter*.

2. In three weeks from the day of *Easter*.

3. In one month from the day of *Easter*.

4. In five weeks from the day of *Easter*.

5. On the morrow of the ascension of our Lord.

By *ATTACHMENT, BILL, &c.*
 On (*Wednesday*) next after fifteen days of *Easter*.

On () next after three weeks from the day of *Easter*.

On () next after one month from the day of *Easter*.

On () next after five weeks from the day of *Easter*.

On (*Monday*) next after the morrow of the ascension of our Lord.

Trinity

All the effoin-days in *Easter* term except the last, which is "*the morrow of the ascension of our Lord*" and all the effoin-days in *Trinity* term except the first, which is "*the morrow of the Holy Trinity*," fall on Sundays.

Effoin days in Easter and Trinity terms are Sundays, except.

All writs issuing out of this court, grounded upon original writs out of *Chancery*, must be made returnable on general return days as on the morrow of the *Holy Trinity*; but writs of attachment, and writs subsequent thereto, and writs grounded on bills filed against attornies, and such officers of the court as are intitled to the privilege of the court, or members of the house of commons, writs of *Habeas corpus*, &c. must be made returnable on a day certain in full term, as on *Friday* next after the morrow of the *Holy Trinity*. But care must be taken that they be not made returnable on any of the following days, which are *Dies non iudicij*, viz. the feast of the *Purification* in *Illy* term, *Ascension day* in *Easter*, and the feast of *St. John the Baptist*, if it happen in *Trinity* term (unless it be the first day of that term.)

Writs grounded on originals returnable on general returns.

Attachments, &c. on days certain.

Dies non iudicij.

There must be at least fifteen days between the *Teste* and return of all original writs returnable in this court, and between the *Teste* and return of all ordinary writs sued and procured upon the same, except where altered by act of parliament.

Fifteen days between Teste and return of original writs and writs subsequent.

A Capias ad respondendum, not having 15 days between the *Teste* and return, set aside, but without costs, 2 *Wils.* 117. 3 *Wils.* 455. *Barnes* 427.

Cap.

Cap. ad respond. amended, there not being 15 days between the *Teste* and return thereof. 3 *Wils. Rep.* 454.

Notice on copy of writ served to appear at return, mentioning the day of the month, without adding *instant*, *next*, or 1757, sufficient; and former (a) doctrine on this subject exploded. *Barnes* 425.

And attachments of privilege.

An attachment of privilege at the suit of an attorney must also have fifteen days between the *Teste* and return.

Where writs of Ven. fac. Hab. cor. jur. Distring. jur. Fi. fac. and Ca. fa. need not have 15 days between Teste and return.

In all actions of debt, and other personal actions, actions of *Ejectione firmæ* for lands or tenements, after issue joined to be tried by a jury, and after any judgment had or obtained, there shall not need to be fifteen days between the *Teste* and return of any writ of *Venire facias*, *Habeas corpora juratorum*, or *Distringas juratores*, writ of *Fieri (b) facias*, or writ of *Capias ad satisfaciendum*, and the want thereof shall not be assigned for error; but not to extend to any writ of

Except a Ca. fa. to ground an exigent, or make bail liable.

Capias ad satisfaciendum, whereon an exigent after judgment is to be awarded, or to a *Capias ad satisfaciendum* against the defendant to make the bail liable. 13 *Car. 2. stat. 2. c. 2. § 6, 7.*

(a) See *Barnes* 419.

(b) Rule absolute to quash writ of *Fi. Fa.* returnable on a general return, instead of a day certain, as it ought to have been, without costs, and defendant to bring no action. *Barnes* 213.

Of commencing an action.

ALL actions in this court are either *Action by original* founded on originals out of *Chancery*;

On attachments of privilege at the suit of *Attachment of* attornies, or other officers intituled to the pri- *privilege.* vilege of the court;

On bills filed against such attornies or of- *Bill.* ficers, or against members of parliament;

On writs of *Habeas corpus cum causa*, *Cer-* *Habeas cor-* *tiorari*, &c. removing causes out of inferior *pus, &c.* courts of record;

On writs of *Recordari facias loquelam*, *Ac-* *Re. fa. lo.* *cedas ad curiam*, or writs of false judgment, &c. removing causes out of inferior courts not of record.

In commencing actions in this court, It *Of bail.* is to be considered, What causes of action require bail, and what persons are liable to be held to bail.

Bail is not required of an (a) heir, nor of an *No bail of an* executor or administrator, unless on a *Deva-* *heir, nor of an* *stavit* grounded, as I apprehend, on a re- *executor or* turn by the sheriff to a *Fieri facias de bonis* *administrator.* *testatoris*, or a *Scire fieri* inquiry, and not on *unless on a* the bare suggestion of the plaintiff. *Devastavit* *Glib. returned.* *Hist. C. P. 37.*

In debt on a penal statute the defendant is *Nor on a pe-* not to be held to special bail. *Relv. 53. Glib* *nal statute.* *Hist. C. P. 37. Barnes 80.*

Neither is bail required in debt on a bail- *Nor on a bail-*

(a) The contrary held in *Pep. & Caf. PraB. C. P. 8.*
VOL. I. G bond,

bond or recognizance of bail. bond, or recognizance of bail, for that would tend to bail *ad infinitum*. But see *Rep. & Cef. Pract. C. P.* 18. *Pract. Reg. C. P.* which seem *contra*.

In battery, conspiracy, or false imprisonment, no bail of course. In assault (b) conspiracy, or false imprisonment, no bail of course, without special motion and order. *Mich.* 1654. *Gilb. Hist. C. P.* 37. *Barnes* 76.

No bail for a malicious prosecution where the plaintiff was acquitted upon a defect in the indictment. In an action for a malicious prosecution a judge will not grant an order to hold the defendant to bail, if the plaintiff was acquitted upon a defect in the indictment, and not upon the merits. 2 *Keb.* 796. *pl.* 34. *Barnes* 76. *Rep. & Cas. Pract. C. P.* 148. *Pract. Reg. C. P.* 66.

Bail by order for criminal conversation. In an action for a criminal conversation with the plaintiff's wife, on an affidavit of the fact, a judge will grant an order to hold the defendant to bail for such sum as he shall think reasonable on the circumstances of the case and parties. *Barnes* 61. *Pract. Reg. C. P.* 63.

Bail in an action for mesne profits. On affidavit and application in the treasury, the judges have ordered the defendant to be held to bail in an action for mesne profits. *Barnes* 79, 85. See 87. *Pract. Reg. C. P.* 62.

In debt for rent. Defendant may be held to bail in an action of debt for double rent, by virtue of *Stat. 4. Geo. 2. c. 28. §. 1.*

Bail in trespass for entry. On an affidavit made, the defendant was

(b) *Barnes* 76. A judge at his chambers will order special bail if he thinks fit, which the defendant has a right to get discharged by application to the court, if not well founded. *Barnes* 61.

held

held to bail in an action of trespass, for entering the plaintiff's hop-ground, and taking and carrying away 20,000 hop-poles, to the plaintiff's damage of 40*l*. The court refused to discharge the defendant on a common appearance, and declared, tho' it was reasonable to have a judge's order in battery, there was none in this case. *Cook & al. v. Sankey, Trin. 7 & 8 Geo. 2. Rep. & Cas. Pract. C. P. 106. Pract. Reg. C. P. 64. Barnes 65.*

In slander no bail, except in slander of title, and then to be left to the discretion of the judge. *Mich. 1654. Barnes 80.*

Bail is not generally required in covenant, unless it be for payment of money. *Same rule. Barnes 67, 78.*

But tho' the covenant be not for payment of money, if the plaintiff makes an affidavit of the sum he is damaged in by the breach of the covenant, the court will not discharge the defendant on a common appearance. *Barnes 67. but Barnes 108, 109. seem contra.*

Defendant held to bail, where cause of action did not accrue till after the bankruptcy and the money due on a contingency, the same not being within any of the statutes of bankrupts. *Barnes 113.*

Where an action of debt is brought on a judgment, if there was bail put in to the original action the defendant shall not be held to bail in the action of debt on the judgment. *Barnes 107, 116. but if there was no bail in the original action, then bail*

must be put in to the action of debt on the judgment. *Barnes* 71. *Com. Rep.* 556. *Pract. Rep.* C. P. 54, 56, 57. *Rep. & Cas. Pract. C. P.* 32, 77.

The like tho' error brought on the judgment, and bail be put in on the writ of error.

If a writ of error be brought on a judgment, and bail be put in on the writ of error, and pending the writ of error, an action of debt be brought on the judgment, the defendant in such action shall be held to bail if there was no bail in the original action; for though it may be said the bail on the writ of error is a security for the plaintiff's demand, yet it is to be observed that there may be accidents whereby such bail will not be liable; as that the writ may abate by the death of the chief justice, or the like.

After judgment reversed by writ of error, defendant had a *Superfedeas*, but before discharged, was charged with new declaration at plaintiff's suit; and upon application to court was discharged by rule from new declaration, and her *Superfedeas* was allowed; after discharge plaintiff caused defendant to be arrested and held to bail for former cause of action; whereupon court was moved to be again discharged by *Superfedeas*, upon entering common appearance: court was (c) divided in opinion, upon hearing council on both sides. *No rule.* *Barnes* 499.

(c) The defendant was a woman, and therefore I think her having two judges in her favour, and being a case of liberty, she should have been discharged.

A prisoner discharged by *Superfedeas* for want of prosecution shall not be held to bail in an action of debt brought on the judgment obtained in the cause wherein he was discharged. *Hil. 8 Geo. 2. Barnes 116, See the rule at large, tit. Prisoners.* *Prisoner discharged not to be held to bail in debt on the judgment.*

If an action be brought against *baron and feme*, and the wife only be arrested, she shall be discharged on a common appearance; for otherwise, the husband may contrive the imprisonment of the wife; 3 *Wils.* 124. but if both the husband and wife be arrested, she shall not be discharged until bail be put in (a) for both, for otherwise a woman may marry a man in gaol and defraud her creditors. *Barnes 67, 68. Sed quod: Rep. & Col. Pract. C. 1. 17. Barnes 96, 100. 6 Mod. 17, 105. 7 Mod. 10, 63. Lev. 1, 216. Barnes 67, 68. Sid. 395. pl. 2. 2 Keb. Rep. 442. pl. 4. But see 10 Mod. 162.* *Action against baron and feme, and wife only arrested, she shall be discharged on a common appearance. Aliter if both arrested.*

Husband and wife rendered after judgment, in discharge of bail wife released upon motion. 3 *Wils.* 124.

No attorney of this court, or other officer intitled to the privilege of the court, is to be held to bail, unless it be on an attachment for a contempt (to which, bail must be taken by the court or a judge, and not by the sheriff) or in an action at the suit of an attorney, or any other person intitled to the privilege of *Attorney not to be held to bail unless for a contempt, &c.*

(d) An attachment granted against an under-sheriff for detaining a married woman in prison till husband found bail for her. *Lat. 224*

another court, viz. *B. R.* or, for in such case the plaintiff's privilege takes away the defendant's. *Vide antea.*

*Seamen and
soldiers.*

31 *G. 2. c.*
c. 10. f. 28.

By *stat. 1 Geo. 2. stat. 2. c. 14. §. 15.* No (·) seaman to be taken out of his majesty's service, unless oath be made that the original cause of action amounted to 20*l.* *Barnes* 95, 114. and by the annual mutiny act, no soldier to be taken out of his majesty's service unless oath be made that the original debt amounted to 10*l.* *Pract. Reg. C. P.* 61. *Barnes* 114, 433. An out-pensioner of *Chelsea* college, not being a soldier in actual service, is not a soldier within the meaning of the mutiny acts. *Pract. Reg. C. P.* 59, 60. *Barnes* 432. *Rep. Ex-~~Ch.~~ Cas.* *Pract. C. P.* 77.

*No bail where
the cause of
action amounts
not to 10*l.**

No person shall be held to bail upon any process issuing out of this court, where the cause of action does not amount to the sum of ten pounds or upwards; and in all cases where the cause of action shall not amount to ten pounds or upwards, the plaintiff shall not arrest the body of the defendant, but shall serve him personally with a copy of the process. *Stat. 12 Geo. c. 29. §. 1, c.* *Stat. 5 Geo. 2. c. 27. Stat. 13 Geo. 2. c. 18.* All these acts are perpetuated by 21 *Geo. 2. c. 3.*

*But defendant
to be served
with copy of
process.*

*No special bail
in Wales or
the counties
Palatine, un-*

No sheriff or other officer within the principality of *Wales*, or counties palatine, upon any writ or process issuing out of any of the

(·) No volunteer mariner. *Stat. 2 Geo. 3. c. 13.*
Stat. 36.

courts of record at *Westminster*, shall hold any person to special bail, unless an affidavit be first made in writing, and filed in that court out of which such writ or process is to issue, signifying the cause of action, and that the same is twenty pounds and upwards; and where the cause of action is twenty pounds and upwards, bail shall not be taken for more than the sum expressed in such affidavit. *Stat. 11 & 12 W. 3. c. 9. s. 2.*

A defendant not to be held to bail, on a discontinuance, in a meer action for same sum and cause, but common appearance to be accepted, and *Supersedeas* granted. *Barnes 113.*

After nonsuit in *B. R.* a common appearance ordered to be accepted in a new bailable action in *C. B.* *Barnes 115.*

Defendant held to bail *second* time, for same cause of action, after plaintiff had discontinued the first writ, by reason of a mistake. *2 Wils. 381.*

Proceedings by original in actions not requiring bail.

If the cause of action does not require bail, a *Præcipe* is to be made out for a common *Capias* in trespass, on which the plaintiff may declare in any county, or for any cause of action, as the case shall require. The *hyacer* makes out the *Capias*, and procures the original from the curfitor, and returns and files it.

Where no bail required, a common clause tregit to be sued out. May declare thereon in any county, or for any cause of action.

The *Præcipe*.

*Præcipe in
trespass.*

Middlesex, Capias for *W. P.* against *J. B.* late of the parish of *St. Clement Danes* in the county of *Middlesex*, taylor, broke the Close at *Westminster*.

J. R. Returnable on the octave
22 Dec. 1777. of *St. Hilary*.

The *Præcipe* is to be carried to the proper filacer, who will make out the *Capias*.

The Form of the *Capias*.

Capias there- on.	GEORGE the third, &c. To the she- riff of <i>Middlesex</i> , greeting. We command
Original 1	you, that you take <i>J. B.</i> late of the parish
Filing 0	of <i>St. Clement Danes</i> in your county, <i>Taylor</i> ,
Capias 0	if he shall be found in your bailiwick, and
Duty 2	keep him safely, so that you may have his
Seal 0	body before our justices at <i>Westminster</i> on
	the octave of <i>St. Hilary</i> , to answer <i>W. P.</i> (f)
5 3	in

(f) Plaintiff declares in an action *qui tam*, &c. upon a *Cap. ad respond.* sued out in his own name only, and held well enough 3 *Willf.* 141.

Burnes says in a *N. B.* that the practice of this court, is the same as settled in *B. R.* by the authority of the case of *C. mung.* and *Davis. E. 9 Geo. III.* *P. 494, 495*, the point settled seems to be, that Plaintiff need not set out in process, in whole or what right he sues Lord *Willf.* when he differed in opinion from *Larner's* book, always said the Court and not *Burnes*

in a plea, wherefore with force and arms he broke the *Cloſe* of the ſaid *W.* at *Westminſter*, and did other injuries to him, to his great damage, and againſt our peace; and have there this writ. Witneſs Sir *William De Grey*, knight, at *Westminſter*, the twenty-ninth day of *November* in the ſeventh year of our reign.

You may put four defendants in a writ; but there muſt be but one plaintiff, unleſs it be a joint action.

Then a copy of the proceſs muſt be made with an *English* notice, ſubſcribed as mentioned in the two next paragraphs, which copy muſt be ſerved on the defendant.

But by *ſtat. 5 Geo. 2. c. 27. §. 4.* (made perpetual by *ſtat. 21 Geo. c. 3.*) upon every copy of ſuch proceſs ſhall be written a notice of the intent and meaning of ſuch ſervice, to the effect following, *viz.*

C. D. You are ſerved with this proceſs, to the intent that you may, by your attorney

Notice to be written on the copy of the proceſs.

The form of the notice.

was miſtaken; I take leave to join with the chief juſtice in his politeneſs on this occaſion; for I am perſuaded the caſe alluded to is the rummage of a dead man's papers; for it is impoſſible to ſay in what court it was determined; Mr. *Abuſt* was for defendant, Mr. Solicitor-General for plaintiff.—Now for my part, in the courſe of 20 years attendance in the court of *Common Pleas*, I never obſerved any advocates but *Serjeants* move there; and if it is ſaid it was a caſe in *B. R.* then the *N. B.* is not very ſatisfactory. It ſeems therefore to be, as I obſerved before, the rummage of a dead man's papers; and ſhould have it expurg'd out of the next edition, ſo it diſgraces the beſt book of practice in this court.

appear in his majesty's court of *Common Pleas* at the return, thereof, being the twentieth of *January* 1778, [as the case shall happen to be] in order to your defence in this action.

The day of the return to be inserted though a Sunday. The very day of the return of the process must be inserted, although it should happen to be a *Sunday*. *Barnes* 293, 294, 295. *Rep. & Cas. Pract. C. P.* 105, 106.

5s. for making and serving the copy. No more than 5s. is to be taken for the making and serving a copy of such process, and no fee for the notice. *Stat. 5 Geo. 2. c. 27.*

In franchises the process is to be served by the proper officer. In particular franchises and jurisdictions the proper officer there shall execute such process. *Stat. 5 Geo. 2. c. 27.*

But if the process be not served by the proper officer, the court will not stay proceedings; the lord of the liberty may bring his action, if he thinks proper. *Barnes* 404. *Pract. Reg. C. P.* 345. *Rep. & Cas. Pract. C. P.* 96.

Capias, and not original, to be served. The process, of which a copy is directed by the above statutes to be served on the defendant, must be a *Capias*, and not an original writ. *Barnes* 410.

Of serving process in a county palatine. If the process be directed into a county palatine, the defendant is to be served with a copy of such process, and not with a copy of the mandate thereupon from the bishop or chancellor to the sheriff of the county. *Pract. Reg. C. P.* 334. *Rep. & Cas. of Pract. C. P.* 119. *Barnes* 406, but held otherwise in *Pract. Reg. C. P.* 343. *Rep. & Cas. Pract. C. P.* 38.

When the defendant is served with a copy of a writ, there must be an *English* notice subscribed as above directed, tho' the cause of action should be above ten pounds, or the writ should be a special *Capias*. *Where copy served, it must be with notice, the action for above 10l. of writ special.*

If the process be against *baron and feme*, service on the husband is sufficient for both; and if the husband does not appear for himself and his wife, the plaintiff may enter an appearance for both. *Barnes* 400, 412. *Process against baron and feme, service on the husband sufficient.*

But in a joint action against two or more defendants, each defendant must be served with a copy of the process. *In a joint action each defendant must be served.*

Proceedings were stayed by the court, because no attorney's name was set upon the copy of the process served upon the defendant. *Barnes* 415. *Rep. & Cas. of Pract. C. P.* 102. *Pract. Reg. C. P.* 440, 441. *Attorney's name to be on copy of process.*

Service of process, though made on the return thereof, is deemed well served. *Hil. 8 Geo. III. C. B.* 10 Feb. 1768. *Wilf. Rep.* 372.

It seems as if the court formerly (g) required, that process should be served before the day of return; but they then differed as to the time of day, for in one (b) case they held, that service of process at ten o'clock in the evening, on the day of return, was good service, for that there was no fraction of a

(g) See *Barnes* 415, 416, 424. *Rich. Pract. Reg.* 352. *C. Cas. & Rep. Pract.* 52.

(b) *E. 1 Geo. II. C. B. Matthews and Partridge.* MS. notes.

day; and in (i) another, it was alledged, that the service was at seven o'clock in the evening, of the day of return, and that the court was risen before the service; however the judges would not then presume, that the service was after the rising of the court, unless it was proved by affidavit; but now I apprehend, that, according to the above-mentioned rule, if the process be served any time of the day whereon it is returnable, before nine o'clock in the evening, it will be sufficient.

Irregularity in process to be complained of before interlocutory judgment.

If there be any irregularity in the service of the process, or in the notice subscribed to the process, the defendant must apply to the court before interlocutory judgment is signed. *Pract. Reg. C. P.* 347. See *Barney* 211, 296, 269. *Rep. & Cas. Pract. C. P.* 152. See *Postea* fol.

And process to be annexed to affidavit.

If the defendant complains of any irregularity in the process, or notice subscribed, he must annex the copy to his affidavit.

Proceedings by original in actions requiring bail.

If bail required, affidavit to be made of cause of action.

If the cause of action amounts to ten pounds or upwards, affidavit must be made and filed of the cause of action. *Stat.* 12 *Geo.* 1. c. 29. 5 *Geo.* 2. c. 27., 21. *Geo.* 2. c. 3.

(i) *Hil.* 5 *Geo.* II. C. B. Hyne and Cane.

*The form of an affidavit of a debt, in order
to hold the defendant to bail.*

Common Pleas.

H. H. of, &c. maketh oath, that *G. W.* *The form of the*
late of, &c. is (k) justly and truly indebted *affidavit.*
to this deponent in the sum of 200 *l.* on one
bond or obligation under the hand and seal
of the said *G. W.* bearing date, &c. whereby
the said *G. W.* is bound to this deponent in
the penal sum of 400 *l.* conditioned for the
payment of 200 *l.* and interest to this depo-
nent, on the day of last past.

Sworn, &c.

Plaintiff, tho' convicted of perjury, may
make an affidavit of debt, sufficient to hold
defendant to bail, tho' he cannot be a wit-
ness. *Barnes* 116.

Affidavit of debt on a single sheet made in
three, causes not applicable to any one; there
should be an affidavit on stamps in each
cause, to hold defendant to bail; and there-
fore common appearances ordered to be ex-
cepted. *Barnes* 115.

This affidavit may be made before any *Before whom*
judge of this court, or commissioner autho- *the affidavit to*
rised to take affidavits in this court, or be *be made.*
fore the officer, who issues the writ or his de-

(k) *In* for *is*, common appearance ordered, 2 *Wils.*

puty; and for which affidavit 1 s. above the stamp-duties shall be paid, and no more. *Stat. 12 Geo. 2. c. 29. 5 Geo. 2. c. 27. 21 Geo. 2. c. 3.*

Affidavit by administrator, that defendant is indebted in 40*l.* as plaintiff believes, and as appears by note; judge who had ordered a common appearance, to be re-attended. *Barnes 74.*

Affidavit made by a third person must be (l) positive. *Barnes 87, 91.*

Affidavit by a third person, that defendant was indebted, as appears by a stated account, (m, insufficient. *Barnes 100.*

Affidavit that defendant was indebted if the ship *Suffex* was not unavoidably lost, *prima facie* sufficient, but affidavits read on both sides controverting the fact. *Barnes 87.*

Affidavit that defendants were indebted jointly, not sufficient to hold them to bail severally. *Barnes 70, 71.*

Affidavit of one convicted of felony, not sufficient to hold to bail, and not to be suppli- ed by subsequent affidavits. *Barnes 79. Pract. Reg. C. P. 49. 2 Wils. 225.*

In case of bankruptcy affidavit of the debt must be positive, unless it appears that bank- rupt refuses to make the same. *Barnes 91.*

(l) But in the case of an executor belief is sufficient. *id. ib.*

(m) But made good by another affidavit, that defend- ant owned the account. *id. ib.* So in case of a bond. "That money appears due, and that defendant owned the debt a year and a half ago." *Barnes 82.*

Obiige,

Obligee, in a bond conditioned to pay obligor, rent due from lessee, held to bail, upon obligor's affidavit, that the lessee was indebted to him in 2300*l.* for arrears of rent. 3 *Wils. Rep.* 154.

By the general rule and practice of this court, affidavits taken before attornies (as commissioners) in causes, wherein they were concerned for the parties in whose behalf such affidavits were made, have been deemed insufficient. See *Barnes* 45.

But an affidavit made in order to hold the defendant to bail before process sued out, or an affidavit of service of process where only a common appearance is required, may be sworn before the plaintiff's attorney, being a commissioner, and may be made use of for the purpose aforesaid. *Pass.* 13 *Geo.* 2. See *Barnes* 60. *Pract. Reg. C. P.* 12.

Notwithstanding the plaintiff makes an affidavit of his debt, or other cause of action, yet the matter of bail is examinable by the court.

On defendant's affidavit, that he believed the whole debt would appear to be paid, common appearance was allowed. *Barnes* 72.

Plaintiff leased to Steven lands in Ireland, defendant became bound to plaintiff by bond in penalty of 5000*l.* conditioned for Steven's payment of rent to plaintiff; upon failure he made affidavit, that 2300*l.* was due to him for arrears of rent under said lease; it was by three judges, sufficient to hold defendant to bail. 3 *Wils.* 154.

The

The next thing is to make out a *Præcipe* for the filacer, which you must suit to the nature of your action, according to the following precedents.

*A Præcipe in
debt.*

Middlesex. Command *G. W.* late of *Westminster* in your county, esq; (*n*) otherwise called *G. W.* of *Westminster* in the county of *Middlesex*, esq; that he render to *H. H.* 400*l.* which he owes him, and unjustly detains.

Ret. on the morrow of All Souls.

J. B. [*the attorney*]

19 Aug. 1777.

Affidavit for 200*l.*

*The Capias
aberson.*

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the Sheriff of *Middlesex*, greeting. We command you, that you take *G. W.* late of *Westminster* in your county, esq; (*o*) otherwise called, (&c.)

*Alias dict' not
necessary.*

(*n*) The *Alias dict'* is used where the debt arises by specialty, but it is said not to be necessary to be inserted, and that it may be and is better left out, and was so adjudged in this court in lord chief justice Eyre's time, in an action upon a bail bond, *Darby* against *Minsbull*.

*On a Latin
bond the Alias
dict', if used,
must be in
Latin.*

If the action be in debt on a bond, and the Obligation is in *Latin*, the *alias dict'* (if inserted) must be also in *Latin*; as thus, Command *John Doe*, late of *London*, gentleman, otherwise called *J. bannem Doe de London* gentleman. *Barnes* 241. *Pract. Reg. C. P.* 322. *Rep. 3* (as of *Pract. C. P.* 91.

(*o*) See the note in the former page.

if

If he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster*, on the morrow of *All Souls*, to answer *H. H.* of a plea, that he render to the said *H. H.* four hundred pounds which he owes him, and unjustly detains, as it is said; and have there this writ. Witness Sir *William De Gray*, Knight, at *Westminster*, the 7th day of July in the sixteenth year of our reign.

M. Blye. Command *H. C.* late of the parish of *St. Clement Dances* in your county, to allow charter, that he render to *W. D.* 30*l.* which he owes him, and unjustly detains.

Command *C. H.* late of *the* that he render to *W. D.* 30*l.* which he owes him, and unjustly detains.

Act. &c.

J. B.

10 Jan. 17, 7

After rest against $\left\{ \begin{array}{l} H. C. \text{ for } 30\text{l} \\ C. H. \text{ for } 30\text{l} \end{array} \right.$

On all *Præcipe* *quo reddi* t, if the sum ex- *Fines payable* exceeds forty pounds, a fine is payable to the King in the following proportions:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From 40 pounds to 100 marks	0	6	8
From 100 marks to 100 pounds	0	10	0
From 100 pounds to 200 marks	0	13	4
From 13 <i>l.</i> 6 <i>s.</i> 8 <i>d.</i> to 100	13	4	0
From 100 <i>l.</i> 13 <i>s.</i> 4 <i>d.</i> to 200 pounds	1	0	0
Vol. I.	11		And

And so consequently for every } 0 6 8
 100 marks more —

And for every 100 pounds more 0 10 0

Wherefore, if you would avoid the fine, draw out a *Præcipe* for a *Capias* in trespass with an *Acetiam*, in debt, in this manner :

Præcipe for a Middlesex. Capias for T. D. against A. S. Capias in trespass with an Acetiam in debt. late of the parish of *St. Martin in the Fields* in your county, surgeon, broke the *Cloſe* at *Westminster*; and also in a certain plea of debt upon demand for 80 l.

Ret' &c.

I. E. by I. R. } Affidavit for 40 l.
 25 May 1777. }

Common appearance ordered, to be accepted for want of an *Acetiam* in the *Præcipe* for the writ left with the filacer, tho' inserted in the *Cap. ad respond.* which was indorsed for bail. *Barnes* 117.

Capias there- on. *GEORGE* the third, &c. To the Sheriff of *Middlesex*, greeting. We command you, that you take take *A. S.* late of, &c. if he shall be found in your balliwick, and keep him safely, so that you may have his body before our justices at *Westminster*, on to answer *T. D.* of a plea, wherefore with force and arms he broke the cloſe of the said *T.* at *Westminster*, and did other wrongs to him, to the great damage of the said *T.* and against our peace; and also, that the said *A.* answer to the said &c. according

According to the custom of our court of the bench, in a certain plea of debt upon demand for forty pounds; and have there this writ. Witness, &c.

Middlesex. Capias for L. R. against L. K. late of the parish of St. James in the liberty of *Westminster* in your county, widow, broke the close at *Westminster*; and also in case upon promise for 50 l.

Ret'

GEORGE the third, &c. To the Sheriff of *Middlesex*, greeting. We command you, that you take, &c. (as before); and also, that the said L. K. may answer the said L. R. according to the custom of our court of the bench, in a certain plea of trespass on the case upon promise, to the damage of the said L. R. fifty pounds; and have there this writ. Witness, &c.

London. Capias, for T. W. against J. M. late of *London*, gent. and S. C. late of *London*, esq; trespass; and also against the said J. for 90 l. upon promise; and also against the said S. for 30 l. upon promise.

Ret'

Lincoln. Capias for J. P. against H. B. late of *Stamford* in your county, grocer, in a plea of trespass and assault.

Ret'

Upon a dangerous assault and battery that may require bail, an affidavit must be made

had an en-
affidavit and
a judge's order.

of the fact at large, whereupon a judge will make an order for holding the defendant to bail in such sum as on the circumstances of the case he shall think reasonable; and then you sue out a *Præcipe* for a common *Capias*, with an *Acetiam*.

*Præcipe in
affidavit
an Acetiam*

London. *Capias* for *W. H.* against *J. B.* late of *London*, *Cabinet-maker*, broke the *Close* at *London*; and also in trespass and assault, to the damage of the said *W.* 200*l.*

Ret.

Bail by order, on
Affidavit for 100*l.*

J. W.

*Præcipe in
affidavit*

Southsex. *Capias* for *E. I.* against *G. C.* late of *Westminster* in your county, gentleman, otherwise called (as in the indenture) in a plea, that he perform to the said *E.* the covenant made between them, according to the force, form, and effect of a certain indenture made between them.

Ret.

*Præcipe in
affidavit
an Acetiam*

Southampton. *Capias* for *T. D.* against *J. W.* late of, &c. that he render to the said *J.* his reasonable account for the time in which he was receiver of the money of the said *J.* &c.

At-Law

If as a bailiff, then as before, to — for the time in which he was bailiff of the said *J.* &c.

If as a bailiff and receiver, then ~~_____~~ for *Bailiff and*
the time he was his bailiff in *L.* and re-^{receiver.}
ceiver of the money of the said *T.* &c.

Lincoln. Command *J. P.* late of *C.* in *Præcipe* in
the county aforesaid, gentleman, that he ^{annuity.}
render to *O. R.* 60*l.* which are in arrear to
him for a certain annuity of 30*l.* which he
owes him, and unjustly detains, &c.

If the defendant lives not in the county ^{Where a Te-}
wherein you intend to try the action, and ^{statum capias}
the cause of action requires bail, you make ^{new Jur.}
out a *Præcipe* for a *Totalium capias*, which
you carry to the filacer for that county in
which you intend to try the cause; as, sup-
pose the defendant lives in the city of *York*,
and you would try the cause in *London*, you
make out a *Præcipe* in the following form;
which you carry to the filacer for *London*.

London. *Capias* for *H. P.* against *R. J.* ^{Præcipe for a}
re of the city of *York*, bookseller, broke ^{Testatum ca-}
the close at *London*.

Returnd on the obave
of St. Hilary.

City of *York.* *Testatum capias*, and al'o
for 200*l.* upon promise.

Returnd on the obave
of the Purification.

J. R.

Affidavit for 100*l.*

31 Dec. 1777.

Testatum ca-
pias.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriffs of the city of *York*, greeting. We command you, that you take *R. J.* late of the city of *York*, bookseller, if he shall be found in your bailiwick, and keep him safely so that you may have his body before our justices at *Westminster*, on

Acetiam.

to answer *H. P.* of a plea, wherefore with force and arms he broke the close of the said *H. P.* at *London*, and did other injuries to him, to the great damage of the said *H.* and against our peace: And also, that the said *R.* answer the said *H.* according to the custom of our court of the bench, in a certain plea of trespass upon the case on promise, to the damage of the said *H.* of two hundred pounds. And whereupon our sheriffs of *London* returned to our justices at *Westminster*, at a certain day now past, that the said *R.* was not found in their bailiwick, whereas it is testified in our said court, that the said *R.* doth lie hid, and run from place to place in your county; and have there this writ. Witness, &c.

If the defendant lives in any liberty which the sheriff cannot enter, you may get the filacer to make out a *Non omittas*, whereupon the sheriff may enter.

The

The form of a Non omittas.^{r.}

GEORGE the third, by the grace of *Non omittas* God, king of *Great Britain, France, and Ireland*, defender of the faith, &c. To the sheriff of *L—*, greeting. We command you, that you do not omit by reason of any liberty of the liberty of the rape of *D.* in your county, but that you take *S. C.* late of, &c. if he shall be found in your bailiwick, and that you keep him safely, so that you may have his body before our justices at *Westminster*, on *to answer W. N.* of a plea, wherefore with force and arms he broke the close of the said *W.* at *G.* and did other injuries to him, to the great damage of the said *W.* and against our peace. And also that the said *S.* may answer the said *W.* according to the custom of our court of the bench, in a certain plea of debt upon demand for thirty pounds. And whereupon you returned to our justices at *Westminster* at a certain day, now past, that the bailiff of the aforesaid liberty, whom you commanded, by virtue of our said writ to you thereupon directed, to take the said *S.* gave you no answer thereto; and have there, &c. *Acetiam.*

If the defendant cannot be taken on the first writ, or served with a copy of it, as the case shall be, and you don't propose to outlaw him, you sue out a *Capias* by continuance, the *Præcipe* for which is the same as before, only this difference, instead of *Where the defendant cannot be arrested on the first writ,* *a Capias by continuance is to be made out.*

H 4

saying,

Cap. by 2 saying, "*Capias* for *T. D.* you say, *Capias*
 cont. 2 " by continuance for *T. D.*" But the writ
 Duty 2 is exactly the same as the first, without the
 Seal 6 distinction of *Alias* or *Pluries*.

As the filacer makes out all these writs, I
 think it needless to trouble the reader with
 any more precedents of them.

*The day of
 signing the
 writ is to be set
 down on the
 writ.*

Every officer or clerk of this court, who
 shall sign any writ or process before judg-
 ment, to arrest any person thereupon, shall,
 before the signing thereof, set down, upon
 such writ or process, the day and year of his
 signing the same, which shall be entered on
 the remembrance upon the forfeiture of 10 *l.*
Stat. 5, 6 H. 8. M. 1. 21. §. 3. and 6, 10
H. 3. c. 25. §. 12. Stat. 9 Geo. 2. c. 35. §.
32. Pract. Reg. C. P. 440, 441. Barnes
420.

*Sum given to,
 to be indorsed
 on the writ.*

Where the plaintiff's cause of action shall
 amount to the sum of 10 *l.* or upwards, and
 affidavit be thereof made, the sum specified
 in such affidavit shall be indorsed on the
 back of the writ or process, for which sum,
 so indorsed, the sheriff or other officer to
 whom such writ or process shall be directed
 shall take bail, and for no more. 12 *Geo.*
c. 29. 5 Geo. 2. c. 27. 21 Geo. 2. c. 3.

*The name of
 the attorney to
 be indorsed
 on every writ
 for arresting
 the body, ex-
 ecution or
 warrant.*

Every writ for arresting the body, writ of
 execution, and every warrant that shall be
 made out on any such writ or execution,
 shall, before the service thereof, be sub-
 scribed or indorsed with the name of the at-
 torney, in a common legible hand, by whom
 such writ, execution or warrant, shall be
 indorsed, and if such attorney shall not be

the attorney immediately retained by the plaintiff, then also with the name of the attorney so immediately retained. *Stat. 2 Geo.*

2. c. 23. §. 22.

Every copy of any writ or process, that shall be served on any defendant, shall be-
fore the service thereof be in like manner subscribed or indorsed with the name of the attorney, who shall be immediately retained by the plaintiff in such writ or process. *Same*
Stat. Vide antea fo. 76.

In case the attorney's name be not put to the writ, the act of parliament doth not make the process void; and tho' the attorney may be punished for not putting his name to it, the party ought not to suffer.
But the act doth not make the process void for want thereof.
Barnes 412, 414. Rich. Prall. Reg. 441. but see Barnes 415, which seems contra.

The not subscribing or indorsing the name of the attorney on any warrant that shall be made out upon any writ, process or execution, shall not vitiate the same; but such writ, process and execution, and all proceedings thereon, shall be as valid and effectual, notwithstanding such omission, as if the act of 2 Geo. 2. had not been made; *Provided* the writ whereon such warrant is made out be regularly subscribed or indorsed according to the said act. *Stat. 12 Geo. 2. c. 13. §. 4.*

Cop. ad resp. 22 telled in *Trinity*, and returnable in *Michmas* term, is void; and plaintiff is liable to an action of trespass and false imprisonment, for he cannot justify under a void or irregular process. *2 H. 6. 341.*

Of

Of common appearances.

Appearance to be entered with placar.

COMMON appearances to writs made out by the filacers are entered with the filacers, for which you pay 2 s. if one defendant, viz. 1 s. for the king's duty, and 1 s. for entering the appearance, and 4 d. for every defendant more than one.

**Defendant to
appear in
eight days.**

Where a defendant is served with a copy of a process, he must cause a common appearance to be entered on the return, or within eight days after such return. *Stat. 5 Geo. 2. c. 27.*

Or plaintiff
may on affida-
vit of service
appear for
him and
proceed.

And in case the defendant shall not appear within eight days after the return of such writ or process, the plaintiff, upon making and filing an affidavit of the personal service of such writ or process, may enter a common appearance for the defendant, and proceed thereon, as if such defendant had entered the same. *Stat. 12 Geo. 1. c. 29.*

In the Common Pleas.

John Doe,

against

*Richard Roe, late of Petersfield, in
the county of Southampton,
saddler.*

*The form of
the affidavit.*

J. S. of, &c. gentleman, maketh oath,
that he, this deponent, did, on the
day of _____ at *Petersfield* in the said
county of *Southampton*, personally serve the
defendant *John Doe* with the writ or process
hereunto

hereunto annexed, by shewing him the said annexed writ or process, and at the same time delivering to him a true copy thereof, on which copy was an *English* notice in writing of the intent and meaning of such service, as by the statute in that case made is required.

Sworn, &c.

J. S.

This affidavit is to be filed *gratis*, and may be made before any judge of the court, or commissioner authorised to take affidavits, or before the proper officer for entering the appearance, or his deputy. *Stat. 12 Geo. 1. c. 29. 5 Geo. 2. c. 27. 21 Geo. 2. c. 3. vide antea. fol. 78. the rule of Pas. 13 Geo. 2.* *Before whom the affidavit is to be made.*

An appearance entered by plaintiff for the defendant, according to the statute, by a wrong name, amended after declaration. *3 Wils. Rep. 49.*

The defendant has eight days to enter his appearance, exclusive of the return day, *e. g.* if the writ be returnable on the octave of St. Hilary, which is the 20th day of January, the plaintiff cannot enter an appearance for the defendant, according to the statute, until the 29th day of January. *The eight days to appear exclusive of the return day.*

If the plaintiff enters an appearance for the defendant before the time the defendant has to enter his appearance is expired, the defendant must complain of this irregularity before judgment is signed. *Co. Cas. 31, 69, 70, 92, 105, 115, 145. Rich. Praet. Reg. 32, 127, 242, 355. Barnes 242, 255, 296.* *Irregularity in plaintiff's entering appearance for defendant to be complained of before judgment.*

An

An appearance cures all errors and defects in process. *Barnes* 163, 167, 424, 451. 3 *Wils.* 141. S. P.

Of bail.

In London or Middlesex 4 days to put in bail.
In any other city or county eight days.
IN *London and Middlesex* the defendant has four days, exclusive of the appearance day of the return of the writ, to put in bail; and in any other city or county he has eight days exclusive of the appearance day. *Hil. 9 Ann.*

If in town, to be put in bail before a judge at his chambers.
 If the bail is to be put in in town, the filacer, or other officer who issued out the writ, is to attend, with the attorney and bail, on one of the judges at his chambers, who will take the recognizance, and the filacer or other officer will make an entry of it in his book, which entry he will afterwards draw up in a proper form, if there be occasion to sue the bail.

To be entered with the proper filacer.
 But care must be taken to apply to the proper filacer or officer, in whose office the bail ought to be entered, for if the bail be entered in a wrong office, the plaintiff may proceed on the bail bond, and the defendant, before he shall be admitted to plead, shall pay full costs to the plaintiff. *Trim. 1 W. & M.*

How or in Testatum capias.

And in case of a *Testatum capias*, bail must be entered, and filed with the filacer of that county wherein the action was first laid, and not with the filacer of that county wherein the defendant was arrested; for otherwise the bail-bond may be assigned; and it is not to be

presumed or expected, that the plaintiff's attorney will search with a wrong filacer.

In case the proper filacer or officer cannot attend, the recognizance may be taken without him, on a piece of parchment properly stamped, viz. with a double twelve-penny stamp.

And in such case you make the entry in this manner

London. Capias, against T. M. late of London, Carpenter, at the suit of W. D. for 100*l.* upon promise, returnable on the morrow of the Holy Trinity.

*Affidavit for 50*l.**

The form of a recognizance of bail taken before a judge.

Dall. W. S. of Pall Mall in the parish of Saint James in the liberty of Westminster and county of Middlesex, esq;
C. S. of the same place apothecary.

*The defendant bound in 100*l.*
Each of the bail in 50*l.**

Taken and acknowledged
the day of
Ec. before

J. S. Attorney for
the defendant.

The Attorney's Practice

If the defendant be not present, and does not enter into the recognizance, then the bail are bound in double the sum the cause of action is sworn to amount unto.

When bail is put in, you give notice thereof in writing to the plaintiff's attorney, as follows:

W. D. plaintiff
against
T. M. defendant.

*Notice of bail
put in.*

S I R,

Take notice, that *W. S.* of [naming the street and parish particularly as in the bail-piece or filacer's book] esq; and *C. S.* of, Esq. apothecary, were this day put in as bail for the defendant in this cause.

<p><i>To Mr. S. T. at- torney for the plaintiff.</i></p>	<p><i>Your humble servant, J. R. Attorney for the def. 10 June 1777.</i></p>
--	--

If the plaintiff's attorney excepts to the bail, he marks the exception in the filacer's book or on the bail-piece, and gives notice thereof in writing to the defendant's attorney.

If the plaintiff doth not mark the exception on the bail-piece, or in the filacer's book, the bail will become absolute in 20 days, notwithstanding he has given notice of exception within the 20 days.

The bail, if excepted to, must justify in four days, or other bail must be added, who
can

in the Court of Common Pleas.

III

can justify within that time, *vide postea*, fol.
Rule Trin. 3 & 4 Geo. 2.

Bail excepted to, and not justifying, are
as no bail, and cannot render the defendant
in their discharge. *3 Will. Rep. 59.*

The defendant's attorney must give no-
tice of adding or justifying, or both, as the
case shall be, &c.

W. D. plaintiff
against
T. M. defendant.

S I R,
This day

R. H. of, &c. in the county of *Middlesex*, victualler, was added to the bail already put in for the defendant in this cause; and, on *Saturday* morning next, the said *R. H.* and also *C. S.* one of the bail before put in for the said defendant in this cause, will justify themselves as bail in court.

Your humble servant,
To Mr. S. T. at- *J. S.*
torney for the *attorney for the def.*
plaintiff. *11 June 1778.*

He must make an affidavit of the service
of the notice, and get a serjeant to move
for leave to justify in our court.

Common Pleas. *W. D.* plaintiff
against
T. M. defendant
A. S.

*Affidavit of
the service of
the notice.*

A. S. clerk to Mr. J. S. attorney for the defendant in this cause, maketh oath, that he, this deponent, did on *Wednesday* last, being the eleventh day of *June* instant, serve Mr. S. T. the attorney for the plaintiff in this cause, with the notice hereunto annexed, by delivering a true copy of the said notice to the said Mr. T.

Sworn, &c.

A. S.

The expence out of pocket is generally as follows :

Putting in bail before a judge.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty ——— ———	0	2	0
Filacer in some counties	0	6	0
Judge's clerk, in term	0	12	0
5 s. in vacation			

1 0 0

Adding,

Filacer ——— ———	0	5	4
Judge's clerk ——— ———	0	2	0
	<hr/> 0 7 4		

Justifying in court,

Affidavit of notice ——— ———	0	2	0
Serjeant's fee ——— ———	0	10	6
Filacer ——— ———	0	4	0
Secondary ——— ———	0	1	0
Cryers ——— ———	0	2	6

1 1 4

2 8 8

The

The judges of this court, or any two of them, whereof the chief justice to be one, may by commissions under the seal of the court, from time to time, impower such persons, other than attornies or solicitors, as they shall think fit, in any of the counties of *England*, to take such recognizances of bail as any person shall be willing to make before them, in any action or suit depending in this court, in manner and form as the judges of the court have used to take the same; which recognizance shall be transmitted to one of the judges, who upon affidavit made of the due taking thereof shall receive the same, upon payment of the usual fees: *Judges may appoint commissioners to take bail. The recognizance to be transmitted to one of the judges.* Which recognizance shall be of the like effect as if taken *de bene esse* before any judge of the court. *Stat. 4 W. & M. c. 4. Vide antea fo. 34.*

For taking this recognizance the commissioner is to take 2 s. and no more. *Fee for taking recognizance*

The judges of assize may take recognizances of bail, which shall be transmitted and received as aforesaid, without oath. *2 s. Judges of assize may take the recognizance of bail. Same stat.*

The bail may justify themselves by affidavit before the commissioner, unless they live in *London* or *Westminster*, or within ten miles thereof. *Where bail may justify by affidavit.*

Bail put in before a judge must justify in person, and cannot justify by affidavit. *Bail put in before a judge*

Upon this act for taking bail by commissioners in the country the court has made several rules, viz.

*Of putting in
bail before a
commissioner.*

Before any bail shall be taken by virtue of this act, a true copy in parchment of the writ, to which the defendant is to put in bail, shall be brought to the commissioners, and on the said copy the recognizance or bail-piece shall be ingrossed in this or the like form, as the case shall be.

*The recogni-
zance.*

Bail, *John Denn* of *Blackbarnsley* in the parish of *Settle* in the county of *York*, gentleman, and *Richard Fenn* of the same place, gentleman.

The party himself in 20*l*.

Each of the bail in 10*l*.

Taken and acknowledged on the
day of _____ in the year of our
Lord _____ conditionally (or *de bene
esse*) before me *A. B.* one of the commis-
sioners.

The condition of the recognizance.

Condition.

You (*naming the defendant, if present*) do acknowledge to owe unto the plaintiff 20*l*. You (*naming the bail*) do severally acknowledge to owe unto the plaintiff the sum of 10*l*. a-piece, to be levied upon your several goods and chattels, lands and tenements, upon condition, that if the defendant be condemned in the said action, he shall pay the condemnation money, or render himself a prisoner to the *Fleet* for the same; and if he fail so to do, you (*naming the bail*) do undertake to do it for him.

*Affidavit to be
made of the
taking such
bail.*

Affidavit of the due taking such bail shall be made before some judge of this court to whom

whom the bail shall be transmitted, or before some person having power to take affidavits in causes depending in this court. *Pas. 5 W. & M.*

All bails taken by any commissioner within the distance of 40 miles from the cities of *London* and *Westminster*; shall be transmitted to the lord chief justice, or one of the judges of the court, within ten days after the taking thereof; and all bails taken by any commissioner above the distance of 40 miles from the said cities of *London* and *Westminster*, shall be transmitted within twenty days after the taking thereof, unless the justices shall be on the circuits, and then as soon as one of them shall return to *London* out of his circuit. *Same rule.*

Bail taken by a commissioner within 40 miles of London, to be transmitted in 10 days; above 40 miles in 20 days; unless, &c.

And after such transmission shall be forthwith filed with the proper officer to be entered upon record, otherwise shall be as no bail, and the plaintiff to be at liberty to proceed on the bail-bond as if no such bail had been put in; and the defendant, in case he be admissible to plead to the original action, shall not be admitted so to do, unless he first pay the full costs to the plaintiff for the prosecution on the bail-bond, and plead as of the time when the bail should have been duly entered. *Hil. 6 Geo. 1.*

And filed with the proper officer, or plaintiff to proceed on the bail-bond.

And defendant not to be admitted to plead to original action, but on payment of costs, &c.

Bails taken before commissioners and transmitted to and allowed by a judge, shall be delivered to the clerk of the judge, who shall allow the said bail, which clerk shall take the fees due to the proper officer for

On bail transmitted, judge's clerk to take the fees for the entry.

the entry thereof, and forthwith deliver the same to be filed. *Mich. 13 Geo. 1.*

No bails to be received or filed, unless transmitted within the times aforesaid.

All bails taken before commissioners in the country shall be transmitted and filed with the proper officer, according to the rule *Hil. 5 Geo. 1.* And no such bail shall be received or filed, unless transmitted within the five times appointed by the said rule, without leave of the court. *Mich. 6. Geo. 2.*

If not filed in time, application to the court; no leave in the treasury.

If the bail be not filed within the times above directed, application must be made to the court; the judges in the treasury will not give leave to file it, the rule saying it shall not be filed without leave of the court.

Notice of such bail to be given within 4 days.

Every defendant's attorney shall give notice to the plaintiff's attorney of the taking such bail within four days after the caption thereof. *Mich. 13 Geo. 1.*

Name of defendant and his bail to be entered in commissioner's book.

Every commissioner is to have a book for entering the names of the defendant and his bail, and of the plaintiff, as in the bail-piece, and the time of taking thereof; and the name of him by whom such bail shall be transmitted.

Where plaintiff's attorney to search.

The plaintiff's attorney may repair to such book for the names of the bail, to the end he may inquire of the sufficiency of them; and if they are found insufficient, may except against them within twenty days after the said bail is transmitted, and notice to the plaintiff or his attorney of taking thereof; and in that case the defendant must either put in better bail, or the cognisors of such bail must justify themselves in open court,

Exception to be within twenty days after bail transmitted, and notice.

And then better bail, or bail to justify.

court, by affidavit made before the commissioner that took the said bail, or by oath made in court, or before one of the judges.
Pas. 5 W. & M.

If special bail be excepted to, the defendant shall perfect his bail within *4* days after exception taken, and in default thereof the plaintiff may proceed on the bail-bond.
Trin. 3 & 4 Geo. 2.

If the plaintiff excepts to the bail, and the defendant adds further bail, the additional bail must justify themselves in court within the four days, without waiting for the plaintiff's excepting to them, for the plaintiff is not bound to except to additional bail; and in default of justifying, as aforesaid, he may proceed on the bail-bond.

If the plaintiff except to bail in the vacation, and will not be satisfied with justification before a judge, the bail must justify within the first four days of the next term at least. It has been held, that a justification before a judge was no justification but by the plaintiff's consent. That by the general rule of this court, requiring bail to be perfected within four days after exception, must be meant the next four days in term. The fair way is to give notice of a justification in court within four days after exception, but is not requisite. See *Barnes* 111, 112, 115.

Notice to justify must be given two days before the day of justification; and a Sunday shall not be reckoned as one of the two days;

notice on the Saturday to justify on the Monday is sufficient.

Bail cannot justify themselves in court, unless they became bail before notice of their justification was given. *Mich. 18 Geo. III.*

No attorney to be bail. No attorney of this or any other court, or any person practising as such, shall be bail in any suit or action depending in this court. *1 Geo. 2.*

No sheriff's officer. No sheriff's officer, bailiff, or other person concerned in the execution of process, shall be permitted or suffered to become bail in any action or suit depending in this court. *Same term.* It has been held that this rule extends to marshal-court officers, and all officers executing the process of this and all other courts. *Barnes 110.*

Of assigning the bail bond. In case the defendant does not put in bail by the time limited by the course of the court, the plaintiff may take an assignment of the sheriff's bail-bond, if he approves of the sufficiency of the obligors.

Sheriff on request to assign bail-bond to plaintiff. The sheriff, at the request and costs of the plaintiff or his lawful attorney, shall assign to the plaintiff the bail-bond by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so indorsed be duly stamped before any action brought thereon. *Stat. 4 & 5 Ann. c. 16. §. 20.*

Whomay bring an action in his own name. And if the bail-bond be forfeited, the plaintiff may after such assignment bring an action

action thereupon in his own name, and the court may by rule give such relief to the plaintiff and defendant in the original action, and to the bail on the said bond, as shall be agreeable to justice and reason; and such rule of court shall have the effect of a defence to such bail-bond. *Same stat.*

The assignee of a bail-bond may bring an action thereupon, in the same court in which the original action was commenced, for that court only hath jurisdiction and can take cognizance of the action. 3 *Wils.* 348. *Barnes* 117.

Proceedings on bail-bond not stayed, where plaintiff has been delayed. *Barnes* 112. Stayed *without* costs, defendant having surrendered before put in suit. *Barnes* 117.

Bail-bond not void, penalty thereof exceeding double the sum due. *Barnes* 159.

No bail-bond taken in *London* or *Middlesex* shall be put in suit till four days exclusive of the appearance-day of the return of the writ on which the bail-bond was taken; and no bail-bond taken in any other city or county shall be put in suit till after eight days exclusive of the appearance-day of the return of the process, and all proceedings to the contrary thereof shall be set aside with costs. *Hil. 9. Ann.* *When bail-bond may be put in suit.*

If the writ, for example, in a country cause be returnable on the morrow of *All Souls*, defendant has to 14 *Nov.* to put in bail; and the bail-bond cannot be put in suit, till 15 *Nov.* See *Barnes* 77, 78.

Rule for sheriff to return the writ.

And like to bring in the body.

Sheriff not returning a writ within six days after rule, to pay costs.

An action lies against him for a false return.

If the same bail be put in above as given to the sheriff, the plaintiff may except.

If the Plaintiff does not approve of the bail taken by the sheriff, he may give the sheriff a rule to return the writ, and on his returning a *Capi corpus* he may give him a like rule to bring in the (a) body, and in default thereof may have an attachment against him any day.

Bail taken by sheriff, under-sheriff, or his deputy, or any other officer having the return of any process issuing out of this court, or of any precept or warrant thereupon, shall neglect or refuse to return the same within six days after service of a rule of this court for that purpose, such sheriff, under-sheriff, &c. shall be liable to pay the costs occasioned by such neglect. *Hil. 8 Geo. 1.*

And if the sheriff returns, that the defendant *Non est inventus* in his bailiwick, when he had really arrested him, an action may be brought against him for a false return.

Formerly, If the bail taken by the sheriff was put in above, the plaintiff could not except against such bail; but the same stood good and absolute: But now,

In all cases wherein bail-bonds shall be taken, and the same bail shall be put in above, the plaintiff may except against such bail. *Micb. 6 Geo. 2.*

(a) Where a sheriff takes a bail-bond, by a rule to bring in the body is meant perfecting bail above; court never expects sheriff to bring defendant's body into court, by virtue of the common rule. *Barnes 400.*

And unless the bail so excepted against shall justify themselves, or other bail be added, who shall justify themselves within the time limited by the rules of the court, the plaintiff may take an assignment of the bail-bond, and proceed thereon, notwithstanding, if they don't justify. *And proceed on the bail-bond, notwithstanding, if they don't justify.*

he excepted to the same persons as bail above. *Barnes* 52, 74.

Declarations in actions on bail bonds amended as well as any other. *Barnes* 26, 114.

Where proceedings on a bail-bond are staid upon consent that it shall stand as a security for the plaintiff, if he recovers in the original action, it is always intended and should be so expressed, that judgment be given upon the bail-bond, and that only execution thereon shall be staid; and without such consent, the court will not so stay proceeding upon the bail-bond, where the plaintiff has been delayed of a trial. But if such delay is through his own neglect, it is otherwise. Where the defendant dies before judgment could be obtained against him in the original action, the court will stay proceedings on the bail-bond; but if the defendant lives so long after the arrest, that if he had put in bail in time the plaintiff could have obtained judgment and execution against him, the court will not stay proceedings on the bail-bond. In like manner, if the defendant becomes a bankrupt and obtains his certificate, the court will stay proceedings on the bail-bond. *Of staying proceedings on bail-bond.*

One bail esteemed as no bail.

Whether defendant can surrender till bail is complete.

Two persons at least must become bail for the defendant; the putting in one bail only is esteemed as no bail, not even sufficient to ground a surrender upon, tho' it be done immediately; and the plaintiff in such case may be forced on the bail-bond notwithstanding any surrender; for the defendant cannot surrender until the bail is complete. *Barnes* 60, 61, 67, 105. *Pract. Reg.* C. P. 84, 85. *Plowd.* 69. *Cr. El.* 672. pl. 31.

But where a defendant, after having obtained a judge's order for time to put in and perfect bail, put in bail and surrendered himself to the Fleet in discharge of his bail, without previously perfecting his bail by a justification; the court held it to be regular. Before a surrender defendant is delivered to his bail, and supposed to be in their custody; by the surrender the custody is altered, and the defendant is in prison; the worth and substance of the bail, who by the surrender are discharged, is totally immaterial. *Barnes* 111, 117. but 5 *Wils. Rep.* 59. which seems *contra*.

Debt on recognizance of bail, writ to be served four days before return
What time to surrender thereon.
No action on recognizance of bail, pend-

If an action of debt be brought on a recognizance of bail, the writ must be served four days before the return; and the bail may surrender the principal on the *Quarto die post* of the return *fidente curia*, but not after the court is risen. *Rep. & Cas. Pract.* C. P. 18.

Though an action of debt on a judgment may be brought pending a writ of error in the original action, and the court will let the

the plaintiff proceed to judgment, and only stay execution till the writ of error is determined; yet if an action of debt be brought on a recognizance of bail pending a writ of error in the original cause, the court will stay proceedings in such cause, ^{giving a writ of error in the original cause.} the bail giving judgment, for by the judgment the bail would be ~~bound~~ ^{released} from ~~the~~ ^{the} principal. *Pract. Reg. C. 1. 83.*

If the plaintiff proceeds by *Scire facias* ^{When bail against the bail, in case of one *Scire facias* may surrender returned *Scire feci*, the bail may surrender on *Sci. fa.*} the principal on the appearance day of the return of the *Scire facias*; and in case of two *Scire facias*'s with *Nihil* return'd, the surrender must be on the appearance-day of the return of the last *Scire facias*, *sedente curia*. See *Barnes* 75, 76.

If the defendant dies after a *Ca. sa.* ^{*Bail bound by death of defendant if *Ca. sa.* returned.*} returned, though before either a *Sci. fa.* or an action of debt be brought, the bail are bound and not relievable; for after the *Ca. sa.* returned, the recognizance is forfeited by law, and all further time allowed for surrendering the principal, as is above mentioned, is merely *ex gratia*, and where there is a possibility of surrendering the principal, which by his death is become impossible. See *Barnes* 107.

A *Capias ad satisfaciendum* against the principal ^{*Ca. sa. in order to charge the bail, should be left with the sheriff four days before the return.*} *Barnes* 64.

Such *Capias ad satisfaciendum* should have ^{*days, fifteen days between the *Teste* and return; and have fifteen days be-*} *Barnes*

between Teste
and return.

Barnes 76. See *Rep. and Cas. of Pract. C. P.*
14. *Pract. Reg. C. P.* 377. *Vide antea*
N. 79.

Plaintiff shall loose his bail in case he de-
clare differently from his writ. 2 *Wils.* 93
3 *Phil. Rep.* 61. See *id.* 141.

Badly receivable
pending a writ
of error.

Ad Captum ad satisfaciendum returnable at
a time when a writ of error is depending, is
not a sufficient foundation to proceed against
the bail. *Barnes 83.*

Bail can't be
witness for the
defendant.

One who is bail cannot be a witness in the
cause for his principal; therefore if the defen-
dant should have occasion to examine one of
his bail has a witness at the trial, he must make
an affidavit that such bail is a material witness
for him in the cause, and thereupon move the
court that such bail may be struck out of the
bail-piece, on adding and justifying another
in his stead. See *Barnes 69.*

Bail jointly
and severally
for 140l. ver-
dict for 300l.
each shall pay
140l.

In an action of assault and battery the
plaintiffs procured a judge's order to hold
the defendant to bail for 140*l.* whereupon
the defendant became bound in 280*l.* and
the bail jointly and severally in 140*l.* The
plaintiffs had a verdict for 300*l.* and brought
separate actions on the recognizance against
the bail. The bail moved the court that on
payment of one sum of 140*l.* and costs,
proceedings might be stayed, and compared
this to an action on a bond; but the plain-
tiffs insisted, that there is a difference, for
in a bond the condition is to pay the mo-
ney; and if one obligor pays it, the other
shall be discharged, for the condition is com-
plied with; but in a recognizance the con-

dition

in the Court of Common Pleas.

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dition is not satisfied till the damages recovered be paid, or the defendant surrendered. And it was held, that the bail being jointly and severally bound, the actions against them could not be discharged unless the execution of the recognizance was performed, viz. that the defendant should pay what was received, or surrender himself to the Fleet, *Calvera* 9. *Et Ux. v. Pinbero*, Mich. 12 G. 2. *Pratt*, Reg. C. P. 88. *Barnes* 76, 77.

Of Declarations.

THE next thing the plaintiff's attorney has to do, is to prepare his declaration:

And note, That if the Action be in

Summonitus
and attachia
ius.

Debt,
Detinue,
Covenant,

Account,
Annuity, or
Replevin,

It must be said in the Declaration, the defendant was summoned to answer, &c.

If the action be in

Case
Trespafs,

Trover, or
Ejectment,

Then the declaration is, that the defendant was attached to answer, &c.

On a common *Clausum fregit*, the plaintiff may declare in any county, or for any cause *On a Clausum fregit may declare in any*
ot

county, or for
any action.

The like on a
Clausum
fregit, with
an Acetiam.

If action, for that process is only to bring the party into court. *Pract. Reg. C. P.* 136, 137. *Rep. and Cas. of Pract. C. P.* 75.

On a *Clausum fregit* with an *Acetiam* in debt, or any other action, the plaintiff may declare in any county, or for any cause of action whatsoever, but then he will lose his bail. *Rep. and Cas. of Pract. C. P.* 58. *Pract. Reg. C. P.* 137.

Plaintiff shall loose his bail, when he declares differently from his writ, as for instance, if he sues out a writ in his own right, and declares as executor, the court will vacate and discharge the bail, and order plaintiff to accept of a common appearance. *3 Wils.* 61.

On a *Præcipe quod reddat* must declare in debt, except it be by the by.

In a *Præcipe quod reddat* in debt the plaintiff can declare in no other action but debt, except he deliver a declaration by the by, and in that case he must first deliver a declaration in the original action. *Id. ib.*

The like on an attachment of privilege.

On an attachment of privilege *de placito debiti*, the plaintiff cannot declare in case, or for any cause of action but debt, unless the declaration be delivered by the by, and in that case the plaintiff must first declare in debt, for an attachment of privilege is in the nature of a special original.

On declaration by baron and feme, the husband can't declare by the by at his own suit. Declaration by the by when to be delivered.

If an action be brought by baron and feme, and a declaration be delivered, in that action, the husband cannot thereupon deliver a declaration by the by at his own suit.

A declaration by the by cannot be regularly delivered after the term in which the writ was returnable.

When

When you have drawn the declaration, for your assistance, wherein you may have recourse to the following precedents, you ingross a copy of it on treble penny stamped paper, and deliver it to the defendant's attorney, who must pay you for the same at the rate of 4 d. per sheet, (reckoning seventy-two words per sheet) besides the king's duty, and eightpence for filing his warrant of attorney, and then you give a rule for the defendant to plead, with the secondary of that prothonotary with whom you enter your proceedings; for this rule you pay 1 s. 10 d. viz. 1 s. 6 d. for the king's duty, and 4 d. to the secondary for the rule.

Notice to plead given to defendant, after delivery of declaration without such notice, was held good, though not given at time of delivery of declaration, or endorsed thereon. 2 Will. 137.

Where the defendant's attorney, after a diligent inquiry could not be found, it hath been held sufficient to leave the declaration in the office, and to give notice thereof to the defendant himself. *Præd. Reg. C. P.* 126. Where neither the defendant nor his attorney can be found, the court on application will order notice, &c. in the office to be good, unless the bail, if any, shew cause to the contrary. *Barnes* 308.

Before the plaintiff's attorney can sign judgment, he must by note in writing demand a plea of the defendant's attorney, except where the plaintiff has entered an appearance for

For the defendant. Notice in the office, *Mich. Geo. 2.*

Plaintiff has till the end of the second term, to deliver his declaration.

Upon process returnable the first, or any other return of a term, the plaintiff has time to the end of the next ensuing term to deliver his declaration to the defendant's attorney, or have the same in the office; and the de-

Defendant after second term may give a rule to declare. Declaration to be demanded in writing.

fendant's attorney (having entered his appearance) may, at the end of the ensuing term, or in four days after, give a rule for the plaintiff to declare, and having demanded a declaration by note in writing of the plaintiff's attorney, may at any time in the vacation of such ensuing term, after the rule for declaring is out, sign his *Non prof.* for want of a declaration, and not afterwards; and the plaintiff shall not, without leave of the court, have any longer time to declare than as aforesaid, other than the time limited by the defendant's rule.

And for want thereof Non prof. to be signed.

Hil. 9 Annæ.

Declaration to be demanded of the agent, and not of the country attorney.

On a rule given to declare, a declaration was demanded of the attorney in the country, by his own agreement, but the *Non prof.* signed for want of a declaration was held to be irregular, for the declaration should have been demanded of the agent in town. *Pract. Reg. C. P. 124. Barnes 311.*

Where no rule, the plaintiff has till the effoin-day of the 3d term to declare.

Where the defendant at the end of the second term does not give a rule for the plaintiff to declare, the plaintiff has till the effoin-day of the third term to deliver or file his declaration. *Rep. and Cases of Pract. C. P. 12. Pract. Reg. C. P. 121.*

After

After *Supersedeas* ordered for want of plaintiff's proceeding to judgment within *three* terms after declaration, and before defendant could be discharged, same plaintiff caused him to be charged with a new declaration, which court held regular, being for a different cause of action. *Barnes 505.*

It has been held, that the plaintiff has two terms to declare in, after bail is put in and perfected. *Pract. Reg. C. P. 121.*

Where a copy of a process is served on any defendant, and an appearance is entered for such defendant by the plaintiff's attorney, pursuant to the late act * for preventing frivolous and vexatious arrests, the plaintiff's attorney shall leave a copy of the declaration in the office, and give notice thereof to the defendant, by delivering an *English* notice written in a secretary-hand to such defendant, or by leaving the same at his last or most usual place of abode, signifying the nature of such action, at whose suit it is prosecuted, and in whose office such declaration is left; and from the time of giving such notice such declaration shall be deemed well delivered to such defendant. *Mich. 1 Geo. 2.*

And in case such defendant, after such notice given, shall not plead by the time the rule for pleading is out, the plaintiff in such case may sign his judgment (a rule to plead being first given) without any other or farther calling for a plea.

* 12 Geo. c. 29. perpetuated by 21 Ch. 2. c. 3.

ther calling for a plea. *Same rule. See Tit. Inquiry.*

Where the plaintiff appears for the def. he may proceed without taking notice of any attorney the def. may have employed.

Where the defendant fails to enter his appearance, and the plaintiff enters it for him, he may proceed according to the above rule, tho' the defendant may have employed an attorney to appear and plead for him, and have given the plaintiff notice of it, and the plaintiff need not call on such attorney for a plea. *Rep. and Cas. of Pract. C. P. 50, 116. Barnes 249, 250.*

When the def. shall plead in four days.

On all process returnable the first, second or third return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within twenty miles of *London*, the defendant shall plead within four days after such declaration delivered, with notice to plead accordingly; without any imparlance. *Mich. 3 Geo. 2. Trin. 8 Geo. 3.*

When decl. may be delivered de bene esse.

to plead accordingly; without any imparlance. *Mich. 3 Geo. 2. Trin. 8 Geo. 3.*

When the def. has eight days time to plead.

And in case the plaintiff declares in any other county, or the defendant lives above twenty miles from *London*, the defendant shall plead within eight days after the declaration delivered with notice to plead, without imparlance; and in default of pleading as afore-

The four or eight days to plead are inclusive, and the notice may be given accordingly.

Though by the word *after* in the above rules they seem to exclude the day of the delivery of the declaration, the construction of them must be governed by the rule to plead, which is inclusive of the day on which it is given. And therefore if a declaration be left in the office *de bene esse* on the first day of a term, notice thereof may be given on the same day to plead within the first four days of the term, (or first eight days of the term, if the defendant has eight days to plead) and not say within the first four (or eight) days after the declaration delivered.

said,

said, the plaintiff may sign his judgment, and all such declarations may be delivered *de bene esse*. Same rules.

And all declarations in *London* and *Middlesex* delivered pursuant to the above rule, on process returnable the first or second return of any term, where the defendant lives within twenty miles of *London*, shall be delivered, with notice to plead to such action within four days *after* such declaration delivered; and all declarations where the plaintiff declares in any other county, or the defendant lives about twenty miles from *London*, shall be delivered with notice to plead within eight days *after* such declaration delivered. *Pasch. 3 Geo. 2.*

The plaintiff may deliver a declaration *de bene esse*, before the time the defendant has to put in bail, or enter a common appearance, is expired, but not afterwards.

It seems a doubt, whether notice of a declaration being filed is necessary, where bail is put in. See *3 Wils. 147.*

Held that delivering a declaration, after the time for putting in bail is expired, as a declaration *de bene esse*, is no waiver of the exception to bail; but demanding a plea thereupon is a waiver of the exception; it is admitting the defendant to be in court, and in a condition to plead. *Trin. 16 & 17 Geo. 2. C. B. Lister v. Wainbouse. Barnes 92.*

In an action which requires only a common appearance, if a declaration be delivered *de bene esse*, the plaintiff can't sign judgment for want of a plea, till the time the defendant enters.

defendant had to enter his appearance is expired; as suppose the *capias* is returnable *Oñtab. Hilary*. and a declaration is left in the office *de bene esse* on the 23d of *January*, and notice and a rule to plead is given the same day, the rule will be out on the 26th, but as the defendant has eight days to appear, exclusive of the return-day, the plaintiff can't sign judgment for want of a plea, till the 29th of *January*, and then an appearance must be first entered, either by the defendant or the plaintiff for him.

Indorsement on declaration de bene esse.

Where a declaration is left in the office *de bene esse*, there should be an indorsement on it, signifying that it is left conditionally, or *de bene esse*. *Barnes* 257.

Decl. to be delivered four days exclusive before the end of the term.

To have a plea the same term, the declaration should be delivered four days (exclusive of the day of the delivery) before the end of the term.

All declarations and pleadings must be delivered, and all demands thereof, and all notices given, before nine of the clock in the evening. *Mitch. 9 Geo. 2.*

Decl. delivered to def. his attorney being known, is bad.

A copy of a declaration delivered to the defendant, his attorney being known, is a bad delivery of the declaration. }

* But on the court's looking into the general rules of *Mitch. 3 Geo. 2.* and *East. 3 Geo. 2.* they held that it was not necessary to indorse notice to plead on the declaration where it is filed *de bene esse*, and notice thereof given to defendant. *Barnes* 303.

If the attorney be not known, the declaration may be left in the office, and notice given to the defendant. *Barnes* 308. See *Id.* 335.

Where a country attorney is concerned for the defendant, the declaration or notice of its being left in the office (as the case shall be) must be given to the agent, and not the country attorney, but where the declaration has been accepted in the country, and Oyer of the bond demanded and given there, and a plea demanded there, the court has refused to set aside the judgment for want of a plea, the defendant having agreed to this method of proceeding by accepting the declaration, &c. in the country. *Must be delivered to the agent, and not to the country attorney.* *Barnes* 306.

The declaration is only well delivered from the time of notice, and therefore if notice of the declaration be given after the rule to plead is given, it is irregular. *Pract. Reg. C. P.* 131. *Rep. & Cas. Pract. C. P.* 111. *Barnes* 304.

If such defendant has eight days to plead, and the declaration be delivered with notice to plead in four days, it is irregular, though judgment be not signed till the eight are expired. *Barnes* 302, 303. *Pract. Reg. C. P.* 135.

Two declarations, one against husband and wife, and the other against wife only, cannot be consolidated. *2 Hylf.* 227.

On a motion to set aside judgment, for that the notice of the declaration mentioned, that the declaration was for goods sold and delivered, and materials found, whereas there was a count in the declaration for money

lent, which was not mentioned in the notice. Upon reading the rule of court, which is, that the plaintiff shall give notice of the nature of the action, the notice was held to be good; and it was said, "that it is not necessary to set forth the whole declaration. *Turner, administrator, v. Burns, Pasch. 2 Geo. 2. Pract. Reg. C. P. 132.*

And it was held, that it is only necessary to set forth the nature of the action, as in debt or in case, without mentioning for what, for that will appear by the declaration itself. *Skin against Gwinel, Pasch. 5 Geo. 2. Pract. Reg. C. P. 133. Barnes 299 §. P.*

But where the notice was a declaration in an action of trespass on the case without further description, it was held insufficient; the intent of the rule being that the defendant should know what he was sued for. Actions in the case for contracts, and for torts are widely different: on several undertakings and promises, or at least on promise should have been added. *Hil. 29 Geo. 2. Taylor against Oxley. Barnes 498. 2 Wils. 84.*

Irregularity in delivering declaration to be complained of two days before executing inquiry.

It there be any irregularity in the delivery or notice of the declaration, the defendant must apply to the court two days before the day appointed for executing the writ of inquiry. *Pract. Reg. C. P. 127.*

Declaration under peculiar circumstances amended on payment of costs, and terms put on defendant, tho' leave to withdraw declaration, and declare *de novo* refused. *Barnes 25, 26.*

Proce-

Precedents of Declarations.

In the Common Pleas.

(a) *Easter Term in the seventeenth year
of the reign of king George the third.*

Middlesex, *P. F.* late of *Westminster* in the *On a bond.*
to wit. *P.* said county of *Middlesex*,
doctor of physick, (b) otherwise called *P. F. de*
paroch. sancti Martini in Prat. Westmonasterii,
Medicinæ Doctor (w) is summoned to answer
J. H. of a plea, that he render to him seventy
pounds which he oweth to him, and unjustly
detaineth, and so forth. And wherefore the
said *J.* by *A. B.* his attorney saith, that where-
as the said *P.* on the nineteenth day of *April*
which was in the year of our Lord one thou-
sand seven hundred and fifty-eight, at *West-*
minster aforesaid in the county of *Middle-*
sex aforesaid, by his certain writing obliga-
tory acknowledged himself to be bound to
the said *J.* in the aforesaid sum of seventy
pounds, to be paid to the said *J.* when he the
said *P.* should be thereunto required, Never-
theless the said *P.* although often required,
hath not paid the said seventy pounds to the

(a) Title of declaration made agreeable to truth of
fact. 2 H. ill. 256.

(b) As to the *alias dict. P. de antea* so. So.

said *J.* but hath hitherto refused, and still doth refuse to pay the same to him; wherefore the said *J.* saith that he is injured, and hath damage to the value of twenty pounds; and thereof he bringeth suit, and so forth. And he bringeth here into court the aforesaid writing, which testifieth the said debt in form aforesaid, the date whereof is the day and year above-mentioned, and so forth.

In the Common Pleas.

*Michaclmas Term, the seventeenth
year of king George the third.*

*Case Mutu-
atus*

London, *W. S.* late of London, esq; was to wit, *W. S.* summoned to answer *R. F.* gent. of a plea, that he render to him 50*l.* which he oweth him, and unjustly detaineth, &c. And whereupon the said *R. F.* by *L. R.* his attorney, saith, that whereas the said *W. S.* on the day of in the year of our Lord one thousand seven hundred and fifty-seven, at London aforesaid in the parish of *St. Mary le Bow* in the ward of *Cheap*, borrowed of the said *R. F.* the said 50*l.* to be paid to the said *R. F.* when he the said *W. S.* should be therein to required; yet the said *W. S.* although often required, hath not yet paid the said 50*l.* to the said *R. F.* but hath hitherto intirely refused, and still doth refuse, to pay him the same; wherefore the said *R. F.* saith, that he is injured, and has

has damage to the value of 20*l.* and thereof he bringeth suit, &c.

You seldom declare in debt for money borrowed, but where judgment for a debt without bond is confessed by virtue of a warrant of attorney, but declare in case on an *Indebitatus assumpsit*.

In the Common Pleas

Hilary Term in the *seventeenth year*
of the reign of king George the
third.

Middlesex, *T. T.* late of *Westminster* in the *Indebitatus*
to wit. county of *Middlesex*, dealer *assumpsit for*
in coals, was attached to answer *T. D.* in a *money lent.*
plea of trespass on the case : And whereupon
the said *T. D.* by *L. R.* his attorney com-
plaineth, that whereas the said *T. T.* on the
first day of *January* in the year of our Lord
one thousand seven hundred and fifty-seven,
at the parish of *St. Clement Dances* in the
county of *Middlesex*, was indebted to the
said *T. D.* in the sum of 100*l.* lawful mo-
ney of *Great Britain*, for the like sum of
money before that time lent by the said *T. D.*
to the said *T. T.* at his special instance and
request, and being so indebted, he the said
T. T. in consideration thereof, afterwards, that
is to say, on the same day and year aforesaid,
at the parish aforesaid in the county aforesaid,
undertook, and then and there faithfully pro-
mised

Breach.

mised the said *T. D.* that he the said *T. T.* would well and truly pay the said 100*l.* to the said *T. D.* when he the said *T. T.* should be thereunto afterwards requested: *Nevertheless* the said *T. T.* not at all regarding his said promise and undertaking so made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *T. D.* in this behalf hath not paid the said sum of money, or any part thereof, to the said *T. D.* (although to pay the same to the said *T. D.* he the said *T. T.* afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid, in the county aforesaid, was requested by the said *T. D.*) but the said *T. T.* hath hitherto intirely refused, and still doth refuse, to pay the same, to the said *T. D.* to the damage of the said *T. D.* of 120*l.* And thereof he bringeth suit, &c.

Indebitatus
assumpsit for
money had
and received to
the plaintiff's
use.

As before, to—For that whereas the said *O. B.* on the day of in the year of his present majesty's reign at the parish of in the county of *Middlesex*, was indebted to the said *S. A.* in 30*l.* lawful money of *Great Britain*, for so much money by the said *O. B.* before that time had and received to the use of the said *S. A.* and being so indebted, he the said *O. B.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid in the county aforesaid, undertook, and then and there

there faithfully promised the said *S. A.* that he the said *O. B.* would well and truly pay the said 30*l.* to the said *S. A.* when he the said *O. B.* should be thereunto afterwards requested: *Nevertheless, &c. as before.*

As before, to — For that whereas the said *T. M.* on the _____ day of _____ in the _____ year of his present majesty's reign, at the parish of _____ in the county of _____ ~~was~~ indebted to the said *C. M.* in 20*l.* lawful money of Great Britain, for so much money by the said *C.* for the use of the said *T.* and at his special instance and request before that time paid, laid out and expended, and being so indebted, he the said *T.* afterwards, that is to say, on the same day and year aforesaid, at the parish aforesaid in the county aforesaid, undertook, and then there faithfully promised the said *C.* that he the said *T.* would well and truly pay the said 20*l.* to the said *C.* when he the said *T.* should be thereunto afterwards requested: *Nevertheless, &c.*

*Indebitatus
assumpsit for
money laid out.*

In the Common Pleas.

*Easter Term in the seventeenth year
of king George the third.*

London, *T. M.* late of London, merchant, *to wit.* *T.* was attached to answer *J. S.* in a plea of trespass on the case: And whereupon the said *J. S.* by *M. C.* his attorney complained, *On an inland bill of exchange by the drawee against the drawer.* *Lilly's Ent.* 44, 55, 90.

plaineth, that whereas the said *T. M.* on the 17th day of *May* in the year of our Lord 1763, at *London* in the parish of *St. Mary Le Bow* in the ward of *Cheap* (he being then a person trading, merchandizing, and using commerce at *London* aforesaid) according to the usage and custom of merchants from the time to the contrary whereof the memory of man is not, made his certain first bill of exchange in writing subscribed with his own hand, bearing date the same day and year aforesaid, and directed the said bill of exchange to one *J. H.* (the said *J. H.* then being a person trading, merchandizing, and using commerce to foreign parts, namely, at) by which said bill of exchange the said *T. M.* required the said *J. H.* twenty-one days after sight thereof, to pay his said first bill of exchange to the said *J. S.* (by the name of *J. S.* merchant at *London*) or order, 112*l.* 5*s.* value of him, with or without advice from the said *T. M.* which said bill of exchange afterwards, that is to say, on the 15th day of *May* in the year of our Lord aforesaid, aforesaid, was shewn to the said *J. H.* for his acceptance thereof, and the said *J. H.* did not accept the said bill, but then and there refused to accept the same, of which the said *T. M.* afterwards, that is to say, on the fifteenth day of *June* in the year of our Lord last mentioned, at *London* aforesaid in the parish and ward aforesaid, had notice, and by reason of the premises, and also according to the usage and custom of merchant, he the said *T. M.* was and became hable to

*Bill not
accepted.*

pay unto the said J. S. the said sum of 112 l. 5 s. in the said bill of exchange mentioned; and being so liable, he the said T. M. afterwards, that is to say, on the same day and year last mentioned, at London aforesaid in the parish and ward aforesaid, undertook, and to the said J. S. then and there faithfully promised, that he the said T. M. would well and faithfully pay and satisfy to the said J. S. the said 112 l. 5 s. in the said bill of exchange mentioned: *Nevertheless, &c.*

It is usual and necessary to lay diverse counts in one declaration, where the plaintiff hath various demands against the defendant, as on a promissory note, for goods sold, money lent, &c. and even where he hath but one demand; as, suppose for goods sold and delivered, it will be proper to lay two counts, as an *Indebitatus assumpsit*, and a *Quantum valent*, whereupon if he fails of proving the price agreed on, he may prevail on the *quantum valent* upon proving the delivery of the goods, and the value of them at that time; and as to the promise in such cases there is no occasion to prove it; the law imports it upon proof of the debt.

the Common Pleas.

*Hilary Term in the seventeenth year
of the reign of king George the
third.*

Middlesex, R. G. late of the parish of St. On a writ
to wit. R. Andrew, Holbourn, in the City of
county of Middlesex, deceased, was attached

to answer *S. N.* of a plea of trespass on the case: And whereupon the said *S. N.* by *L. R.* his attorney complaineth, that whereas the said *R. G.* on the tenth day of *December* in the seventh year of his present majesty's reign, at *Westminster* in the county of *Middlesex* made his note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year, by which said note the said *R. G.* promised to pay ~~to the~~ said *S. N.* or his order, *ten days after the date* of the said note, the sum of fifty pounds, *for value received by* him the said *R. G.* By reason whereof, and also by force of the statute in such cases made and provided, the said *R. G.* became liable to pay to the said *S. N.* the said sum of 50 *l.* in the said note mentioned, according to the tenor and effect of the said note; and being so liable, he the said *R. G.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay to the said *S. N.* the said 50 *l.* in the said note mentioned, according to the tenor and effect of the said note. *And where-*
as also the said *R. G.* afterwards, that is to say, on the first of *Jannary* in the year aforesaid, at *Westminster* aforesaid in the county aforesaid, was indebted to the said *S. N.* in 100 *l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes, by the

Indebitatus
 assumpsit for
 goods sold and
 delivered.

he said (c) *S. N.* before that time sold and delivered to the said *R. G.* at his special instance and request; and being so indebted, he the said *R. G.* in consideration thereof, afterwards, that is to say, on the day and year last above mentioned, at *Westminster* afore said in the county afore said, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay the said 100 *l.* to the said *S. N.* when he the said *R. G.* should be thereunto requested. *And whereas also* afterwards, that is to say, on the day and year last above mentioned, at *Westminster* afore said in the county afore said, in consideration that the said *S. N.* had before that time sold and delivered to the said *R. G.* at his like special instance and request, diverse other goods, wares and merchandizes, he the said *R. G.* undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would, when he should be thereunto requested, well and truly pay to the said *S. N.* so much money as the goods, wares and merchandizes last above mentioned were at the time of the sale and delivery thereof reasonably worth. And the said *S. N.* in fact

Quantum
valebant
res eon.

(c) After verdict where the defendant's name is put in the declaration, instead of the plaintiff's name, as for instance, "by the said *R. G.* before that time sold and delivered to the said *R. G.* instead of the said *S. N.*" the court will reject the defendant's name, as being surplusage. 3 *Willf. Rep.* 43. *Com. Rep.* 557. *S. P.* See *Skin* 591. *Sid.* 135. *Stat.* 16 & 17 *Car.* II. *chap.* 8.

faith,

Infimal com-
pulsifer.

Breach.

faith, that the goods, wares and merchandizes last above mentioned were, at the time of the sale and delivery thereof, reasonably worth other 100*l.* of like lawful money of *Great Britain*, that is to say, at *Westminster* aforesaid in the county aforesaid, whereof the said *R. G.* afterwards, that is to say, on the same day and year last above mentioned, there had notice. *And whereas also* the said *R. G.* afterwards, that is to say, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, accounted together with the said *S. N.* concerning diverse other sums of money before that time due, and unpaid by the said *R. G.* to the said *S. N.* and the said *R. G.* was upon the said account then and there found in arrear to the said *S. N.* in 76*l.* 12*s.* 6*d.* of like lawful money of *Great Britain*; and the said *R. G.* being so found in arrear, in consideration thereof afterwards, that is to say, on the day and year last above mentioned, at *Westminster* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *S. N.* that he the said *R. G.* would well and truly pay the said 76*l.* 12*s.* 6*d.* to the said *S. N.* when he the said *R. G.* should be thereunto requested: *Nevertheless* the said *R. G.* not at all regarding his said several promises and undertakings so made aforesaid in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *S. N.* in this behalf, hath not paid to the said *S. N.* the said several sums of money, or any

of them, or any part thereof, (although to pay the same to the said *S. N.* he the said *R. G.* afterwards, that is to say, on the same day and year last above mentioned at *Westminster* aforesaid in the county aforesaid, was requested by the said *S. N.*) but the said *R. G.* hath hitherto intirely refused, and still doth refuse to pay the same to the said *S. N.* to the damage of the said *S. N.* of 200 *l.* and thereof he bringeth suit, &c. . .

It is said, that in an *Infimus computus* the plaintiff must in his declaration lay the very day of the account, and the sum agreed upon by both parties to be due.

In the Common Pleas.

*Hilary Term in the seventeenth year
of the reign of king George the
third.*

Middlesex, **L.** K. late of *Westminster* in the
to wit. county of *Middlesex*, widow, Indebitatus
assumpsit for
the use and oc-
cupation of a
house.
was attached to answer *J. B.* esq; of a plea of
trespass upon the case, &c. and whereupon
the said *J.* by *S. H.* his attorney complain-
eth, that *whereas* the said *L.* on the first
day of *January* in the year of our Lord one
thousand seven hundred and fifty-seven; at
Westminster aforesaid, was indebted to the said
J. in the sum of eight pounds and fifteen
shillings of lawful money of *Great Britain*,
for the use, occupation and enjoyment of one
VOL. I. L messuage,

Quantum mer-
uit thereon.

messuage, with the appurtenances, of the said *J.* situate, standing and being in *Westminster* aforesaid, for a long space of time then past, that is to say, for the space of one quarter of a year then past, by the said *L.* by the permission of the said *J.* and by, from and under the said *J.* at the special instance and request of the said *L.* had and enjoyed, and being so indebted, she the said *L.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, undertook, and to the said *J.* then and there faithfully promised to pay to him the said sum of money, when she the said *L.* should be thereafter afterwards required: *And whereas also* the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, in consideration that the said *J.* at the special instance and request of the said *L.* had permitted and suffered the said *L.* to have, occupy, possess and enjoy a certain other messuage, with the appurtenances, of the said *J.* situate, standing and being in *Westminster* aforesaid, for a long space of time then past, that is to say, for the space of one quarter of a year then past, undertook, and to the said *J.* then and there faithfully promised to pay to him so much money as he had reasonably deserved to have from the said *L.* for the same; and the said *J.* in fact saith, that he had reasonably deserved to have from the said *L.* for the same, another sum of eight pounds and fifteen shillings of like lawful money, that is to say, at *Westminster* aforesaid, where-
of

of the said *L.* afterwards, that is to say, on the same day and year aforesaid at *Westminster* aforesaid had notice: *And whereas also* the said *L.* afterwards, that is to say, on the same day and year aforesaid at *Westminster* aforesaid, was indebted to the said *J.* in the further sum of ten pounds of like lawful money, for the like sum of money by the said *J.* before that time, at the special instance and request of the said *L.* and to the use of the said *L.* paid, laid out and expended; and being so indebted, she the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *J.* that she would well and truly content and pay him the said ten pounds last mentioned, when afterwards she the said *L.* should be thereto required: *Nevertheless* the said *L.* not regarding her said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *J.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof, although to pay the same to him the said *J.* she the said *L.* afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid, was requested by the said *J.* but the said *L.* to pay the same to him, hath hitherto refused, and doth yet refuse, to the damage of the said *J.* of ten pounds; And thereof he bringeth suit, &c.

*Indebitatus
assumpsit for
money laid out.*

Breach.

In the Common Pleas.

*Easter Term in the seventeenth year
of the reign of king George the
third.*

*Indeb. ass. for
work done and
materials
found.*

London, *W. H.* late of London, woollen-
draper, was attached to answer
J. B. of a plea of trespass on the case; and
whereupon the said *J. B.* by *J. W.* his at-
torney complaineth, that whereas the said *W.*
H. on the twenty-first day of *February* in the
seventh year of his present majesty's reign,
at London in the parish of *St. Mary Le Bow*
in the ward of *Cbeap*, was indebted to the
said *J. B.* in 30*l.* of lawful money of *Great*
Britain, as well for work before that time
done and performed by the said *J. B.* for the
said *W. H.* at his special instance and request,
as for divers materials and necessary things
used in and about the said work before that
time found and provided by the said *J. B.* at
the like special instance and request of the
said *W. H.* And the said *W. H.* being so in-
debted, in consideration thereof, afterwards,
that is to say, on the same day and year afore-
said, at London aforesaid, in the parish and
ward aforesaid, undertook, and then and
there faithfully promised the said *J. B.* that
he the said *W. H.* would well and truly pay
the said 30*l.* to the said *J. B.* when he the
said *W. H.* should be thereunto required:

*Quantum me-
ritum thereon.*

And whereas also afterwards, that is to say,
on the same day and year aforesaid, at Lon-
don

don in the parish and ward aforesaid, in consideration that the said *J. B.* had before that time done and performed other work for the said *W. H.* at his like special instance and request, and had found and provided, at the like special instance and request of the said *W. H.* diverse other materials and necessary things used in and about the said last mentioned work, he the said *W. H.* undertook, and then, and there faithfully promised the said *J. B.* that he the said *W. H.* would, when he should be thereunto required, well and truly pay to the said *J. B.* so much money as he therefore reasonably deserved to have: And the said *J. B.* in fact saith, that he did therefore reasonably deserve to have of the said *W. H.* other *3*l.** of like lawful money of *Great Britain*, that is to say, at *London* aforesaid in the parish and ward aforesaid, whereof the said *W. H.* afterwards, that is to say, on the same day and year aforesaid, there had notice: *Nevertheless, &c.*

In the Common Pleas.

*Hilary Term in the sixteenth year of
the reign of king George the
third.*

Southampton, *J. S.* late of *Crouddall* in the *For not re-*
to wit. said county of *Southamp-* pairing
ton, yeoman, was attached to answer *R. D.* *sences.*
in a plea of trespass on the case, and where-

upon the said *R. D.* by *J. L.* his attorney complaineth, That whereas the said *R. D.* on the first day of *October* in the sixth year of his present majesty's reign, was seised, and is still seised in his demesne as of fee, of and in one close called the kitchen-garden, situate, lying and being in *Croudall* aforesaid in the said county of *Southampton*, to which said close called the kitchen-garden, another close in the possession, tenure or occupation of the said *J. S.* called the hop-garden, at *Croudall* aforesaid in the said county of *Southampton*, lieth next and contiguous adjoineth, between which said close of the said *R. D.* called the kitchen-garden, and the said close in the tenure or occupation of the said *J. S.* called the hop-garden, there is now, and time out of mind hath been, certain pales or fences, which part and divide the said closes the one from the other. *And whereas* the said *J. S.* and all occupiers and possessors of the said close called the hop-garden, for the time being, time out of mind were used and accustomed and ought to make, repair and amend the said pales, and fences between the said close of the said *R. D.* called the kitchen-garden, and the said close of the said *J. S.* called the hop-garden, with all necessary reparations and amendments, as often as need should be or require, lett any cattle out of the said close called the hop-garden into the said close called the kitchen-garden should escape and enter, and do damage there: *Nevertheless* the said *J. S.* not ignorant of the premisses, but contriving and fraudulently intending the said *R. D.* in
this

this behalf unjustly to damnify, and to deprive him of the whole benefit, profit and advantage of the said close called the kitchen-garden, afterwards, *to wit*, on the said first day of *October* in the said sixth year of his present majesty's reign, and from thence to the first day of *January* in the said sixth year of his said present majesty's reign, the pales and fences separating and dividing the said close called the kitchen-garden, ~~and the~~ said close called the hop-garden ~~by~~ from the other as aforesaid, permitted to remain and continue ruinous, broken, and in decay for want of repairing the same; by means whereof the cattle, hogs and sheep of the said *J. S.* and of diverse other persons to the said *R. D.* unknown, on the said first day of *October*, and on several days and times between the said first day of *October* and the said first day of *January* in the said sixth year of his said present majesty's reign, out of the said close of the said *J. S.* called the hop-garden, into the said close of the said *R. D.* called the kitchen-garden, broke and entered, and the grass, corn, barley, beans, pease, turnips, carrots and cabbages, there then lately growing and being, to the value of nine pounds and nineteen shillings, eat, trod down, and consumed; by means whereof the said *R. D.* the whole benefit, profit and advantage of his said close called the kitchen-garden, for all that time, *to wit*, from the said first day of *October* in the said sixth year of his said present majesty's reign to the said first day of *January* in the said sixth year of his said present ma-

L. 4

jesty's

jeſty's reign, wholly loſt and was deprived of; whereupon the ſaid *R. D.* ſaith, that he is wronged, and hath damage to the value of nine pounds and nineteen ſhillings; And therefore he bringeth ſuit, &c.

*Trepaſs.
Breaking
plaintiff's
cloſe, &c.
Andrews's
Rep. 21, 284.*

Southampton, *T. W.* late of *Chriſt-Church* in the county of *Southampton*, gentleman, was attached to anſwer *J. P.* of a plea, wherefore with force and arms he broke the cloſe of the ſaid *J. P.* at *L.* in the county aforeſaid, and his graſs and herbs, to the value of 20 *l.* there lately growing, with certain cattle grazed, trampled on and conſumed, and did him other injuries, to the great damage of the ſaid *J. P.* and againſt the peace of our lord the preſent king; and whereupon the ſaid *J. P.* by *J. G.* his attorney complaineth, that the ſaid *T. W.* on the firſt day of *June* in the ſixth year of his preſent maſteſty's reign, with force and arms, &c. broke the cloſe of the ſaid *J. P.* at *L.* in the county aforeſaid, and the graſs, corn, barley, beans, peaſe, turnips, carrots and cabbages, to the value of 10 *l.* there then lately growing, with certain cattle, that is to ſay, with horſes, oxen, cows, hogs and ſheep, grazed, trampled on and conſumed, and other injuries, &c. to the great damage, &c. and againſt the peace, &c. and whereupon the ſaid *J. P.* ſaith that he is injured, and hath damage to the value of twenty pounds; And thereof he bringeth ſuit, &c.

In the Common Pleas.

*Michaelmas Term in the seventeenth
year of king George the third.*

Middlesex, *J. M.* late, of, &c. was attached *Assault.*
to wit. *J.* to answer *J. H.* of a plea,
wherefore with force and arms he assaulted
the said *J. H.* at *Westminster* in the county of
Middlesex, and beat, wounded and ill-treated
him, so that his life was despaired of, and
other injuries did to him, to the great da-
mage of the said *J. H.* and against the peace
of our lord the present king, &c. And
whereupon the said *J. H.* by *J. C.* his attor-
ney, complaineth, that the said *J. M.* on the
day of in the
year of his present majesty's reign, with force
of arms, that is to say, with swords, staves
and knives, assaulted the said *J. H.* at *West-*
minster in the county of *Middlesex*, and beat,
wounded, and treated him ill, so that his life
was despaired of; and other injuries, &c. to
the great damage, &c. and against the peace,
&c. wherefore the said *J. H.* saith, that he is
injured, and hath damage to the value of 50*l.*
And thereof he bringeth suit, &c.

Surrey, *J. T.* late of, &c. brewer, was at-*Trouer.*
to wit. *J.* tached to answer *W. B.* of a plea
of trespass on the case; and whereupon the
said *W. B.* by *L. R.* his attorney complain-
eth, that whereas the said *W. B.* on the tenth
day

day of *December* in the seventh year of his present majesty's reign, at *Kingston* in the county of *Surry*, was possessed of the following goods and chattels, that is to say [*here insert the goods*] to the value of one hundred pounds, as of his own proper goods and chattels; and being so thereof possessed the said *W. B.* casually lost the said goods and chattels out of his hands and possession; which said goods and chattels afterwards, *to-wit*, on the said tenth day of *December* in the seventh year aforesaid, at *Kingston* aforesaid in the county aforesaid, came by finding to the hands and possession of the said *J. T.* Nevertheless the said *J. T.* knowing the said goods and chattels to be the goods and chattels of the said *W. B.* and to him of right to belong and appertain, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W. B.* of the said goods and chattels, hath not delivered the said goods and chattels to the said *W. B.* (altho' often required) but afterwards, that is to say, on the tenth day of *January* in the seventh year aforesaid, at *Kingston* aforesaid in the county aforesaid, converted the said goods and chattels to his own proper use, to the damage of the said *W. B.* of 200*l.* And thereof he bringeth suit, &c.

A count cannot be added to a declaration after the second term of the delivery or filing thereof in the office. *Barnes* 500.

See further precedents among the pleadings at the end of the book, &c.

Money, &c. brought into court.

THE intent and consequence of bringing money into court, will appear by the following rule.

In the Common Pleas.

Michaelmas Term in the seventeenth year of king George the third.

S. Against *R. Wednesday* the 28th of *November*. *Rule for paying money into court.* It is ordered, That the defendant shall pay to the plaintiff, or to his attorney, ten pounds, together with costs to be taxed by Mr. prothonotary *Cooke*, if the plaintiff will accept thereof, and that thereupon all further proceedings in this action shall be stayed; but if the plaintiff will not accept thereof, the defendant shall immediately bring the said ten pounds into this court, and plead the general issue; and if upon the trial of the issue between the said parties the plaintiff shall become nonsuit, or the jury shall not assess damages to the plaintiff exceeding the said ten pounds, then the plaintiff shall have no costs, but shall pay to the defendant, or to his attorney, costs to be taxed by the said prothonotary; which costs shall

shall be paid out of the money so brought into court, if sufficient for that purpose, and the residue, if any, shall be paid to the plaintiff. But if the money so paid into court be not sufficient to pay the said costs, the deficiency shall be made good by the plaintiff. But if upon the trial of the said issue the jury shall assess damages to the plaintiff exceeding the said ten pounds, then judgment shall be entered for the plaintiff upon the verdict with costs, and the plaintiff shall have the said ten pounds out of court towards satisfaction of such judgment, and may take out execution for the residue.

Entered on the motion of *By the court.*
 serjeant Agar for the
 defendant.

*Money not to
 be brought into
 court where
 the plaintiff is
 an executor or
 administrator.*

Where the plaintiff is an executor or administrator, money may not be brought into court; See *Barnes* 280, 286. *Pract. R. C.* p. 250. but as the reason given is, that an executor or administrator is not by law to pay costs. And *Barnes* 287, and *Pract. Reg. C. P.* 249. All seem *contra*. Therefore *quere*, Whether money may not be brought into court, if the action brought by the executor or administrator be such an action as he might have brought in his own right, and in which he need not have named himself executor or administrator; for in such an action he will be liable to pay costs on a nonsuit, or the like.

[In

In debt for rent money may be brought in- *May in debt to court. Barnes 280. Pract. Reg. C. P. for rent.* 257.

In replevin and avowry for rent the plaintiff was allowed to bring money into court. *In replevin.*

In covenant, in which the breach was assigned in a sum certain, viz. 11*l.* for not dressing corn, leave was given to bring in the *In covenant, for a sum certain.* 11*l.* upon the common rule. *Hil. 15 Geo. 2. C. B. Walnouth v. Houghton, Barnes 284.*

In debt on a bond, conditioned for good behaviour and paying money, motion for leave to bring in the money and plead performance to the rest of the condition denied. *In debt on a bond denied.* *Hil. 18 Geo. 2. C. B. Atkins v. Taylor, Barnes 285.*

In debt for the penalty of a charter-party, motion to bring in the money denied. *And in debt on a charter-party.* *19 Geo. 2. C. B. Yeoman v. Ross. Id. ib.*

In debt on a bond conditioned for the performance of covenants in a lease, and breach assigned for non-payment of 10*l.* for half a year's rent, the like motion denied. *And in debt on a bond for performance of covenants, and breach in a sum certain.* *Hil. 22. Geo. 2. C. B. Wright v. Benington, Barnes 286.*

In trover, goods not being ponderous have been allowed to be brought into court; this is discretionary in the court, and where they have been ponderous, the plaintiff has been ordered to shew cause why he should not accept them. *Barnes 281. Pract. Reg. C. P. 260. Rep. and Cas. of Pract. C. P. 130.*

The court will not give the defendant liberty to bring money into court on some of the *Defendants shall not bring the*

money in to part, and demur to the rest of the declaration.

the counts in the declaration, and demur to the rest; for the reason of making the rule for bringing money into court, is to prevent vexation, and make an end of the cause. *Pract. Reg. C. P.* 256.

In an action for mesne profits after recovery in ejectment, defendant shall not pay money into court. *2 Will.* 115.

But leave to bring in money as to some counts, and plead several pleas to the rest.

But the court gave leave to bring 5*l.* 5*s.* into court upon the common rule, with respect to the 7th and 8th counts, there being 9 counts in the declaration, and as to the rest to plead the general issue, the statute of limitations and a set-off. *Trin.* 21 & 22 *Geo.* 2. *C. B. Hellier v. Hallet*, administratrix. *Barnes* 286.—Leave to plead bankruptcy to the count, and to bring in money on the common rule, and plead the general issue to the other counts. *Pas.* 16 *Geo.* 2. *C. B. Hall v. Lane*, *Barnes* 350.

To bring in money, and plead *plene administravit*, and the general issue to the whole.

Leave granted to bring money in on the common rule, and plead *plene administravit*, and the general issue to the whole. *Hil.* 23 *Geo.* 2. *C. B. Austin v. Ross*, executor. *Barnes* 287.

When money may be brought into court.

It has been said the defendant may be admitted to bring money into court after the rule to plead is out, but not after he has pleaded, without the plaintiff's consent. *Barnes* 281. But *Hil.* 29 *Geo.* 2. between *Phillips* and *Barker*, leave was given to withdraw the general issue, to bring 42*s.* into court and plead the same again on taking notice of trial for sitting after term, no delay having been occasioned by the defendant's having omitted

omitted to bring the money in before plea pleaded. *Barnes* 289.

If a regular judgment be set aside on payment of costs, pleading an issuable plea, *&c.* Nor after a regular judgment set aside. the defendant shall not have leave to bring money into court. *Barnes* 281. *Pract.*

Reg. C. 85, 262.

The defendant had brought money into court on the common rule; the plaintiff would not accept the money, but proceeded to trial, and upon the trial was nonsuited; and the defendant moved in the treasury, that in regard the plaintiff was out of court by the nonsuit, he might have the money back, and produced the *Postea*. The judges on consideration were of opinion, that the defendant by bringing the money into court had admitted the plaintiff to be intitled to it at all events, and that therefore the defendant could not have the money back again: Afterwards The plaintiff nonsuited, defendant cannot have the money back.

the plaintiff brought a new action, and the court made a rule, that the plaintiff might have the money if he thought fit; but if not, that it should remain in court on the common rule in the new action. *Lane v. Wilkinson*, Mich. 1. Geo. 1. *Pract. Reg. C. P.* 250. *Rep. and Cas. of Pract. C. P.* 36. On a new action leave for plaintiff to have the money, or let it lie on the common rule.

The like resolution, and leave for the defendant to bring in more money on a new action being brought. *Dickenson v. Talkin*, Trin. 3 Geo. 2. *Pract. Reg. C. P.* 252. The like, and leave to bring in more money on the new action. But see the rule *antea*.

Where the plaintiff has refused the money and proceeded, the court has admitted him to take the money out of court on paying the defendant

had refused it, defendant his costs subsequent to the bringing and proceeded. the money into court. Barnes 280, 282.

If judgment arrested, money to be paid to plaintiff. The judgment was arrested, and consequently no costs payable on either side; the court ordered 10*l.* brought into court by the defendant to be paid to the plaintiff. *Pas. 16 Geo. 2. C. B. Fisher v. Kitchingman, Barnes, 284.*

Plaintiff's attorney paid his bill out of money brought into court. On the common rule 37*l.* being paid into court, the plaintiff proceeded to trial and recovered a greater sum, and afterwards became a bankrupt, the assignees moved to have the 37*l.* paid to them; but the plaintiff's attorney insisting, that as he had been the means of obtaining the verdict, he ought to be first paid his bill of costs; it was ordered that his bill should be taxed, and that what was due to him should be paid out of the 37*l.* and the residue to the assignees. *Trin. 27, 28 Geo. 2. C. B. Owston v. Obrian, Barnes 145.*

What sum on a treasury motion.

5*l.* or under may be brought in on a motion in the treasury.

Rule absolute for leave to withdraw plea of general issue, on payment of costs, pay 2*l.* 2*s.* into court, on common rule, and plead the same plea again; the defendant taking notice of trial for the sitting after term in *Middlesex*; the court observed, that no delay had been occasioned to plaintiff, by defendant's omitting to bring money into court, before plea pleaded. *Barnes 269.*

As to laying of actions, and changing the Venue.

ALL real and mixed actions, as waste, *Ejectione firme*, &c. are local, and must be laid in the county where the land lies; and actions of trespass *Quare clausum fregit* must be laid in the county where the wrong was done. *Local actions.*

Actions of debt, detinue, assault, annuity, *Transitory account*, &c. are transitory, and may be laid in any county where the plaintiff pleaseth. *Transitory actions.*

But by a rule of this court, actions upon *Cass*, trespass, the case, trespass for goods, assault or imprisonment, arising in any *English* county, are to be laid in their proper counties, unless they arise where the justices of *Nisi prius* session come. And because trespass or trover for goods, battery, imprisonment and slander must needs be notorious in what county they arise, the attorney knowingly laying them out of their proper county (unless in the cases before expressed, or such other cause as shall be allowed by a judge of the court) shall be severely punished. *Mich. 1654.* *Attornies lay- in: actions of trespass, &c. in foreign counties, unless, &c. to be severely punished.*

In a transitory action, before the defendant is pleaded, on motion and affidavit made (That the plaintiff's cause of action (if any) arose in the county of *A.* and not in the county of *B.* as laid in the declaration, or elsewhere out of the county of *A.*) the court will change the Venue to the proper county; and the defendant must plead to the new action.

Venue may be changed tho' the defendant comes in on the exigent. as he should have done to the former without delay; and the *Venue* may be changed in this manner though the defendant comes in on the exigent. *Same rule.*

**Venue can't be changed before appearance.* The defendant cannot move to change *Venue* in any action, until his appearance be entered. *Pas. 24 Car. 2.*

May move to change the Venue at any time before plea. Any defendant may move to change the *Venue* at any time before plea pleaded, in all such actions where the *Venue* may be changed by the court of this court, notwithstanding such defendant may have applied for and obtained further time to plead before such motion made. *Mich. 16 Geo. 2.*

Where a plea shall be no waiver of a rule Nisi for changing the Venue. The defendants having put in their plea, after a rule for shewing cause why the *Venue* should not be changed, and before it was made absolute; the court held, that the putting in the plea by inadvertency was no waiver of the rule, and gave the defendants leave to withdraw their plea on payment of costs, and made the rule for changing the *Venue* absolute. *Trin. 24 & 25 Geo. 2. C. B. Herbert v. Flower et al. in trover. Barnes 360.*

Rules *Nisi* for changing the *Venue* from *London* into *Essex* were discharged; the defendant on obtaining a judge's order for time to plead having consented to reject *gratis*, and to take notice for trial at the sitting after term in *London*; for though an order for time to plead is generally no reason against changing the *Venue*, yet if the defendant's attorney will consent to take notice of trial in the county where the action is laid, that consent shall bind him; if the judge had known the

the ~~the~~ *Adant's* intention of moving to change the *Venue*, he would have made his order without prejudice to such motion. *Trim.* 28 *Geo.* 2. *Hunter* against *Gray*, and *Smith* against *Gray*, *Barnes* 493.

Action on the case on a custom of the bo- *Venue changed*
rough of *Leicester*, for exercising the trade of *ea on r ading*
a watch maker there, not being a freeman. *a claim on*
The *Venue* was changed from *London* to *Leis-* *without the*
cestershire, without the usual affidavits. *usual affida-* *vit.*
there is a commission of *goal delivery* every
affixes for this borough, but no commission of
Nisi prius. *Trim.* 19 & 20 *Geo.* 2. *C. B.*
Mayor, &c. of Leicester v. *Grien*, *Barnes*
492.

If it be moved the last day of the term, *Not to be mo-*
the court will not make a rule; for the plain- *ed the last*
tiff has no time to shew cause. *Pract. Reg.* *day of term.*
C. P. 4. 6, 427.

But if the declaration be delivered so *Unlist, &c.*
late, that the plaintiff cannot move before
the last day of term, he may move it then.
Barnes 489.

The *Venue* may not be changed from a *The Venue not*
county at large to a city and county, as from *to be changed*
the county of *Middlesex* to the county of the *from a county*
city of *York*. *Barnes* 477. *to a city.*

But the *Venue* has been changed from a *Except Lon-*
county at large into *London*. *Id. ib.* *don.*

It may be changed from one city and coun- *But move from*
ty to another city and county, as from the *one city and*
city of *Norwich* to the city of *London*. *Pract.* *county to an-*
Reg. C P. 429. *other.*

The court will not change the *Venue* into a *Not to be*
county palatine, as from *Middlesex* to *Lanca-* *changed into a*
shire.

county palatine.

shire. Rep. and Cas. of Pract. C. P. 478, 488. Pract. Reg. C. P. 428, 429.

Of changing the Venue into cities and counties where assizes are seldom held, or but once a year.

The Venue cannot be changed into Hull, Canterbury, &c. because it is not known when an assize will be held there; nor into the city of Worcester or Gloucester, out of the county at large, because the assizes for the city and the county at large are held at the same place. In Easter or Trinity term, the Venue may be changed into a city or county where the assizes are held but once a year, as Bristol, Cumberland, &c. In Michaelmas and Hilary term there is no certain rule, but the court should change the Venue then, if it can be done without manifest inconvenience.

Nor in an action of Scandalum magnatum, or in a bond or promissory note.

The court will not change the Venue in an action of *Scandalum (a) magnatum*, nor where the plaintiff sues on a bond, or other specialty, nor on a bill (b) of exchange or promissory (c) note. See *Rep. and Cas. of Pract. C. P. 119. Pract. Reg. C. P. 317.*

But where there is a declaration on a note with other counts, as for goods sold and delivered, &c. the court will change the Venue, unless the plaintiff will undertake, at the peril of a nonsuit, to give evidence on the promissory note. See *Barnes 484, 492.*

(a) *Rep. and Cas. of Pract. C. P. 132. Pract. Reg. C. P. 417. Barnes 482.* (b) 2 *Barnes 491.* (c) *Pract. Reg. C. P. 417, 418. Barnes 480, 483, 485. Rep. and Cas. Pract. C. P. 152.*

Ans. If a serjeant or attorney, If a serjeant or attorney, be plaintiff, and sues by *Capias*, and not by writ of privilege, the *Venue* may be changed, *the Venue* for he has thereby waived his privilege, and *may be changed.* is to be considered only as a common person. *ed.*

Action retained in *Middlesex* on motion to change the *Venue* into *Worcestershire*, in right of plaintiff's privilege as an attorney, though attachment was not *Test.* out of *Middlesex.* *Barnes* 493.

If an attorney be defendant, his privilege alone is not a sufficient cause to change the *Venue.* *Rep. and Cas. of Pract. C. P.* 135. *Pract. Reg. C. P.* 419. *Barnes* 482. *An attorney defendant not entitled to have the Venue changed.*

Venue changed from *Middlesex* to *Monmouthshire.* *Barnes* 493.

Pleas.

IF the defendant answers the plaintiff's declaration, it is either by plea or demurrer, of both which there are two sorts, general and special. *Pleas.*

A general plea, commonly called the general issue, is a concise direct answer to the declaration. *General.*

A special plea contains some particular matter, either by way of excuse, justification, or the like. *Special.*

(d) *Rep. and Cas. of Pract. C. P.* 145. *Pract. Reg. C. P.* 420. *Barnes* 346. (e) *Rep. and Cas. of Pract. C. P.* 132. *Pract. Reg. C. P.* 419. *Barnes* 479, 480.

General issues.

Non est factum
to a debt
on a bond.

And the said *P.* by *L. R.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt by virtue of the said writing, because he saith, that that writing is not his deed; and of this he putteth himself upon the country.

Non est factum
to a bill
or indenture.

The same as before, only, instead of the word *writing*, say *bill*. The like of an indenture, *mutatis mutandis*.

Non est factum
testato. is.

And the said *J. P.* by *T. B.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he ought not to be charged with the said debt by virtue of the said writing, because he saith, that the said writing is not the deed of the said *H. P.* and of this he putteth himself upon the country.

10 Co. 100.

Nil debet.

And the said *R.* by *M. S.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not owe to the said *H.* the said 100*l.* or any part thereof, in manner and form as the said *H.* hath above declared against him; and of this he putteth himself upon the country.

Nil debet in
arbit. qui tam.
Jury's Return
223.

And the said *H.* by *J. B.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he the said *H.* doth not owe to our said lord the king, and to the said *J. B.* who as well, &c. the said 100*l.* or any part thereof, in manner and form as the said *J.* who as well, &c. hath above

above declared against him; and of this he putteth himself upon the country.

And the said *C. D.* by *E. F.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith, that he doth not detain from the said *A. B.* the said thirty pounds nor any part thereof, in manner and form as the said *A. B.* above complaineth against him; and of this he putteth himself upon the country.

Non detinet in debt. Brownl. 170. Lilly's Entries 215.

And the said *C.* by *R. P.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he did not undertake in manner and form as the said *G.* above complaineth against him; and of this he putteth himself upon the country.

Non assumpsit.

And the said *A. B.* and *C. D.* by *E. B.* their attorney, come and defend the force and injury, when, &c. and say, that the said *J. W.* [the t^e. ator] in his life-time did not undertake in manner and form as the said *R.* above complaineth against them; and of this they put themselves upon the country.

Non assumpsit by co. actors.

And the said *J. W.* by *J. S.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he is not guilty of the premisses above laid to his charge, as the said *H.* above complaineth against him; and of this he putteth himself upon the country.

Not guilty in case.

And saith, that he is not guilty of the said trespass, as, &c. (*ut supra*).

In trespass.

And saith, that he is not guilty of the said trespass and assault, as, &c.

In assault.

*Replication to
the general
issue.*

The replication to each of these without issue is this; and the said *D.* doth so likewise, *i. e.* likewise puts himself upon the country.

Special pleas.

*Non assumpsit
intra sex an-
nos.*

And the said *W.* by *J. C.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said *E.* ought not to have her said action therefore against him, because he saith, that he did not undertake at any time within six years next before the day of * suing forth the original writ of the said *E.* in manner and form, as the said *E.* above complaineth against him; and this he is ready to verify: Wherefore he prayeth judgment, whether the said *E.* ought to have her said action therefore against him, &c.

Replication.

And the said *E.* saith, that she by any thing before alledged ought not to be barred from having her said action against the said *W.* because she saith, that the said *W.* at some time within six years next before the day of suing forth the original writ of the said *E.* undertook in manner and form, as the said *E.* above complaineth against him; and this she prayeth may be inquired of by the country; and the said *W.* doth so likewise, &c.

Rejoinder.

* If at the suit of an attorney say, *suing forth the said writ of privilege.*—If against an attorney say, *exhibiting the said bill.*

And the said *S.* by *K. M.* his attorney, cometh and defendeth the force and injury, when, &c. and saith, that the said *V.* ought not to have his said action against him, because he saith the said several causes of action did not accrue, nor did any of them accrue to the said *V.* within six years next before the day of the obtaining the original writ of him the said *V.* and this he is ready to verify: Wherefore he prayeth judgment if the said *V.* ought to have his said action thereof against him the said *S.*

Actio non accrevit infra sex annos.

And the said *V.* saith, that he by any thing above alledged ought not to be barred from having his action aforesaid against him the said *S.* because he saith, that the said several causes of action did accrue to the said *S.* within six years next before the day of obtaining the original writ of him the said *S.* to wit, on the aforesaid 12th day of *August* in the year of our Lord 1758, at the parish aforesaid in the county aforesaid; and this he prayeth may be inquired of by the country; and the aforesaid *S.* doth so likewise, &c.

Replication.

And the said *T.* by *J. W.* his attorney cometh and defendeth the force and injury, when, &c. and as to the coming with force and arms, and whatever is against the peace of our now lord the king, the said *T.* saith, that he is not guilty thereof; and of this he putteth himself upon the country; and the said *R.* doth so likewise, &c. And as to the residue of the said trespasses above supposed to be done, the said *T.* saith, that the said *R.* ought not to have or maintain his said action thereof

Rejoinder.

Son assault d'amefine.

thereof against him, because he saith, that the said *R.* at the time in which the said trespass is above supposed to be done at *L.* in the county aforesaid, with force and arms, &c. assaulted the said *T.* and then and there would have beaten, wounded, and evilly treated the said *T.* if he the said *T.* had not then and there immediately defended himself against the said *R.* by which the said *T.* then and there defended himself against the said *R.* and so the said *T.* saith, if any damage or hurt then and there happened to the said *R.* it was from the assault of the said *R.* and in defence of the said *T.* and this the said *T.* is ready to verify: Wherefore he prayeth judgment, if the said *R.* ought to have or maintain his said action against him, &c.

Replication
de injuria sua
propria.

And the said *R.* saith, that he by any thing by the said *T.* above by pleading alledged ought not to be precluded from having his said action against the said *T.* for the residue of the trespass, because he saith, that the said *T.* on the day and year above mentioned, at *L.* aforesaid in the county aforesaid, of his proper injury, without the cause by the said *T.* above by pleading alledged, assaulted the said *R.* and beat, wounded, and evilly treated him in manner and form as the said *R.* above complaineth thereof against the said *T.* And this he prayeth may be inquired of by the country; and the said *T.* doth so likewise, &c. Therefore as well to try the said issue, as the said other issue above joined between the said parties, the sheriff is commanded, &c.

Rejoinder.
Venire
awardad.

And the said R. J. G. and A. by T. F. their attorney come and defend the force and injury, when, &c. and as to the coming with force and arms, and also the whole trespass aforesaid, except the assault and imprisonment aforesaid, they say they are Not guilty thereof; and of this they put themselves upon the country; and the said N. doth so likewise; and as to the rest of the trespass aforesaid above supposed to be done, they the said R. J. G. and A. say, That the said N. ought not to have his said action thereupon against them, because they say that before the said time in which that assault and imprisonment is supposed to be done, to wit, in the term of St. Hilary in the — year, &c. one A. B. duly sued out of the court of our lord the king, before the king himself, (the said court then being at *Westminster* in the county of *Middlesex*) a certain writ of our said lord the king of *Latita* against the said N. by the name of P. N. gent. and against V. E. J. C. and J. C. in the said writ also named, directed to the then sheriff of the county of *Devon*; by which said writ the said sheriff of the said county of *Devon* was commanded to take the said N. F. V. E. J. C. and J. C. if they should be found in his bailiwick, and to keep them safely, so that he might have their bodies before our said lord the king at *Westminster*, on Monday next after the morrow of the *Ascension* of our Lord then next ensuing, to answer the said A. B. in a plea of trespass, and also to a bill of the said A. against the said N. for 60*l.* of debt, according

*Justification
in assault and
imprisonment.*

*Writ sued out
of B. R.
against the
plaintiff.*

*Directed to
the sheriff of
Devon.*

according to the custom of the court of our said lord the king, before the king himself
Writ delivered to the sheriff. to be exhibited; which said writ afterwards, and before the return thereof, to wit, on the

Warrant thereupon to defendants.

ninth day of *May* in the — year, *Et c.* the said *A. B.* at *S.* afore said delivered to one Sir *E. S.* bart. then sheriff of the said county of *D.* to be executed in due form of law. By virtue of which said writ, the said Sir *E. S.* then sheriff of the county afore said afterwards, to wit, on the — day of — in the — year afore said, and before the return of the said writ, at *S.* afore said made his certain warrant in writing, sealed with the seal of his office, directed to the said *R. J. G.* and *B.* and to one *R. E.* by which said warrant the said then sheriff, on the behalf of our lord the king, commanded the said *R. J. G.* *R.* and *R.* and each of them, that they should take the said *N. F.* if he should be found in his bailiwick, and that, *Et c.* so that the said sheriff might have his body before our said lord the king at *Westminster*, on the said *Monday* next after the morrow of the *Ascension* of our Lord, to answer the said *A. B.* of the plea and bill afore said, which said warrant afterwards, to wit, on the said — day of — in the — year afore said, at *S.* afore said, was delivered to the said *R. J. G.* and *B.* to be executed according to law; by virtue of which said warrant they the said *R. J. G.* and *B.* afterwards, and before the return of the said writ, to wit, on the — day of — in the — year afore said, at *S.* afore said, took and arrested the said *N. F.* and then and there had him in
 their

By virtue whereof they arrested the plaintiff.

their custody by virtue of the said warrant, and detained the said *N.* as it was lawful for them to do, by the time in the said declaration above specified, which said taking and arresting the said *N.* in form aforesaid, and for the cause aforesaid, are the same assault and imprisonment, whereof the said *N.* above complaineth; without this, that they the said *R. J. G.* and *B.* or either of them, are guilty of any assault and imprisonment, otherwise, or in any other manner before or after the said — day of — in the — year aforesaid; and this they are ready to verify: Wherefore they pray judgment if the said *N.* ought to have his action thereupon against them, &c.

Traverse.

Sed vide as to this plea, 3 Lev. 62, 63.

And the said *T.* by *R. R.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that at the time of making the said several promises and undertakings he was within the age of twenty-one years; and this he is ready to verify: Wherefore he prayeth judgment, if the said *W.* ought to have his said action thereupon against him, &c.

Infra ætatem.

And the said *W.* saith, that he by any thing before alledged ought not to be barred from having his said action against the said *T.* because he saith, that the said *20l.* expended and laid out by him the said *W.* for the said *T.* and the taylor's work done and performed by him the said *W.* together with the materials and necessary things used in and about the said work, and in form aforesaid found and

Replication, for necessary apparel, suitable to defendant's degree.

and provided by the said *W.* for the said *T.* were laid out and expended, done and performed, found and provided by the said *W.* at *London* aforesaid, in the parish and ward aforesaid, for the necessary apparel and cloathing of the body of the said *T.* his degree requiring the same; and this he is ready to verify: Whereupon he prayeth judgment, and his said damages by occasion of the premises, to be adjudged to him, &c.

*Rejoinder, not
for necessary
apparel, &c.*

And the said *T.* saith, that the said 20*l.* expended and laid out by the said *W.* and the said taylor's work done and performed by the said *W.* together with the materials and things necessary, used in and about the said work, and in form aforesaid found and provided by the said *W.* for the said *T.* were not for the necessary apparel and cloathing of the body of the said *T.* in manner and form as the said *W.* has thereupon above by replying alledged; and of this he putteth himself upon the country; and the said *W.* doth so likewise, &c.

*Duress to a
bond.*

And the said *H. J.* by *S. A.* his attorney cometh and defendeth the force and injury; when, &c. and saith, that the said *S. C.* ought not to have or maintain his said action against him, because he saith, that he, at the time of making the writing aforesaid, was imprisoned by the said *S. C.* and others by his contrivance, *to wit*, at *T.* aforesaid in the county aforesaid, and was there detained in prison until he the said *H. J.* by force and duress of imprisonment then and there made the said

said writing to the said S. C. wherefore he prayeth judgment if the said S. C. ought to have or maintain his said action aforesaid, &c.

Mich. 10 Geo. 2.

1 Count. *Indeb. ass.* for serving defendant as a hired servant.

2 *Indeb. ass.* for work and labour.

3 *Quantum meruit*, for nursing defendant's daughter.

4 *Insimul computasset.*

And the said *John Carter* by *J. S.* his attorney cometh and defendeth the force and of 3s 6d.

injury, when, &c. And as to the first promise and assumption in the said declaration mentioned, except as to 3s. 6d. part of the said sum of 10*l.* therein mentioned; and as to all the other promises and assumptions mentioned in the said declaration, the said *John* saith, that he did not assume upon himself in manner and form as the said *Margaret* above thereof complaineth against him; and of this he putteth himself upon the country; and as to the said 3s. 6d. part of the said sum of 10*l.* in the said first promise and assumption in the said declaration mentioned; and as to the said first promise and assumption in that half, the said *John* saith, that the said *Margaret* ought not to have or recover against him any more damages by reason of the not paying thereof, than the said 3s. 6d. because he saith, that after the said first promise and assumption above supposed to be made, and before the suing out the original writ of the said *Margaret*, to wit, on

Plea of tender

Lilly's Ent.
476.

Pract. Reg.
562, 505.

1 Lutw 368.

the

the first day of *January* in the year of our Lord 1753, at *Westminster* afore said, he the said *John* was ready and offered to pay, and tendered to the said *Margaret* the said 3*s.* 6*d.* which the said *Margaret* then and there refused to accept from the said *John*. And the said *John* further saith, that from the time of making the said first promise and assumption hitherto he hath been always ready, and still is ready, to pay the said 3*s.* 6*d.* to the said *Margaret*, and he bringeth the same here into court, ready to be paid to the said *Margaret* if she is willing to receive the same; and this he is ready to verify: Wherefore he prayeth judgment, if the said *Margaret* ought to have or recover against him any more damages than the said 3*s.* 6*d.* &c.

IV. *Chapple.*

*The money to be paid into court
to the prothonotary when the
plea is left, whch sh u l be
pleaded in four days.*

Replication.

And as to the said plea of the said *John* as to the first promise (except as to 3*s.* 6*d.* part of the said sum of 10*l.*) and as to all the other promises mentioned in the said declaration, the said *Margaret* saith, that the said *John* did promise and undertake in such manner and form as the said *Margaret* hath above complained against him the said *John*; and of this she likewise putteth herself upon the country; and as to the said 3*s.* 6*d.* part of the said 10*l.* in the said first promise mentioned, and in bar pleaded to be tendered as
above

above, she the said *Margaret* saith, that by reason of any thing by the said *John* above in pleading alledged, she ought not to be precluded from having her said damages therefor against him the said *John*, because she saith that he the said *John* did not at any time before the suing out of the said original writ of the said *Margaret*, offer to pay or tender unto the said *Margaret* the said sum of 3s. 6d. as the said *John* hath above in his pleading alledged; and this she prayeth may be inquired of by the country, &c. And the said *John* doth so likewise, &c. Therefore, &c.

And *Thomas Merriton*, who is impleaded by the name of *Thomas Moreton*, in his proper person cometh and defendeth the force and injury, &c. and saith, that he is now, and always was called and known by the surname of *Merriton*, and not *Moreton*, as by the said writ and declaration is above supposed; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed, &c.

And *John Smith*, late of the parish of St. James within the liberty of *Westminster* in the county aforesaid, yeoman, against whom the said *Ralph Bigland* hath brought his said writ, by the name of *John Smith* late of the parish of St. James within the liberty of *Westminster* in the county aforesaid, cheesemonger, in his proper person cometh and defendeth the force and injury, &c. and saith, that on the day of suing out the said original writ, and long before, he was, and yet is a yeoman, and not of any mystery, trade or profession;

trade these words are intended to answer that objection.

without this, that the said *John Smith* on the day of suing the said original writ, or at any time before or since, was a cheeflemonger; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed. [See more pleas in abatement, *Vol. 2. fo. 1.^o to 17*]

Plea to be delivered in writing to the plaintiff's attorney.
It can be left in the office.

The defendant is to deliver his plea in writing [on paper stamped with a treble penny stamp] to the plaintiff's attorney: *Mitch. 1654.*

And if there be no such attorney to be found, or being found refuseth to accept it, then the plea may be left in the office. *Same rule.*

Rule to plead, and an order for time. Plaintiff need not give a new rule.

Where a rule to plead has been given, and the defendant obtains an order for time to plead till the first day of the next term, the plaintiff may sign judgment in default of the defendant's pleading, without giving a new rule. *Rep. and Cas. of Pract. C. P. 67, 141.*

The plea here delayed by an injunction.

Where the plaintiff has given a rule to plead, and has been delayed from signing judgment by an injunction out of *Chancery*, after the injunction is dissolved he may sign judgment without giving a new rule. *Barnes 258.*

Plea can't be delivered in the country

A plea delivered to the attorney in the country is irregular, it must be delivered to the agent in town or left in the office. *See rule antea.*

Nil debet to assumpsit, &c. in assumpsit.

If the defendant pleads a false plea, as *Nil debet* to an action on the case upon *assumpsit*, the plaintiff may sign judgment.

A plea of tender ought regularly to be pleaded in the same manner as a plea in abatement, *viz.* in four days after the declaration delivered, if delivered four days before the end of the term; and if the declaration be delivered before the effoin-day of a term, then it must be delivered within the four days of that term, as a plea of the last term. See *Barnes* 361. But this is to be dispensed with upon particular circumstances, as if the defendant lives at a distance in the country, so that his attorney cannot deliver this plea in due time, the court will upon such reasonable cause give further time to plead a tender, as of the term in which the declaration was delivered, but such application should be within the four days, or as soon as possible it can be without any delay on the defendant's part. See *Barnes* 351, 352.

No dilatory plea shall be received unless the party offering the same do by affidavit prove the truth thereof, or shew some probable matter to the court to induce them to believe that the fact of such dilatory plea is true. *Stat. 4 & 5 Anne.*

There must be an affidavit to verify the fact, in a plea of *antient demeine*. 3 *Wils. Rep.* 51.

A plea of *Infra statem* ought to have an affidavit annexed, to verify the truth of the plea. *Pract. Reg. C. P.* 5.

A plea in abatement must be pleaded within the first four days after the declaration is delivered or left in the office, although no

Tender when to be pleaded.

No dilatory plea to be received without affidavit.

Affidavit to verify the truth of the plea of infra statem.

Plea in abatement to be pleaded in first 4 days.

rule to plead be given, or else the defendant must within that time procure a special imparlance; and a plea in abatement otherwise pleaded is a mere nullity, and the plaintiff may sign judgment. *Rep. and Cas. of Pract. C. P.* 64. *Pract. Reg. C. P.* 286. *Barnes* 331, 334.

*For count of
affidavit to
plea in abat-
ment plaintiff
may sign judg-
ment.*

If a plea which ought to be verified by affidavit, has not an affidavit annexed, the plaintiff may *instantly*, without applying to the court for leave, sign judgment as though no plea had been delivered. *Pract. Reg. C. P.* 4, 282. *Rep. and Cas. of Pract. C. P.* 38.

*As if a plea
were brought
as by a serjeant
hand, he deliv-
ered without.*

If a plea, which ought to be signed by a serjeant, be delivered without a serjeant's hand, the plaintiff may sign judgment as if no plea had been delivered. *Id. ib.*

*What pleas do
not require a
serj. hand.*

The following pleas do not require a serjeant's hand, viz.

*Comperuit ad diem,
Son assault demejne,
Piere administravit,
Riens per descent,
Null tiel record,*

*Per nias,
Solziz ad diem,
Ne unques executor,
Infra tutatem.*

Rep. and Cas. of Pract. C. P. 41. *Pract. Reg. C. P.* 282. *Barnes* 365.

Nor do

*Ne unques administrator,
Non est factum,
Nil debet.*

*Non Assumpt,
Not guilty. Barnes
365. Per Dures.*

Wherever the plea is signed by a serjeant, the replication must likewise be signed. *Barnes* 365.

The

The demand of a plea must be in writing, ^{Demand of a plea to be in writing.} and the demand of a plea indorsed on the back of the declaration is insufficient, except where a prisoner is defendant. See *Tit. Prisoner postea.*

The plaintiff cannot sign judgment for ^{When to sign judgment.} want of a plea, 'till the afternoon of the day after the rule to plead is out.

Where the defendant obtains a judge's order for time to plead, the plaintiff cannot sign judgment 'till the afternoon of the day ^{When on a judge's order for time to plead.} after the time given by the order is expired; as if by the order the defendant has till Monday to plead, the plaintiff can't sign judgment before Tuesday in the afternoon. *Pract. Reg. C. P. 237. Rep. and Cas. of Pract. C. P. 67.*

A summons for time to plead ought not to be taken out after the rule to plead is out; ^{No summons to be taken out after rule to plead is out.} and if such a summons be taken out and served, 'tis no stay of proceedings. *Rep. and Cas. of Pract. C. P. 137. Barnes 254.*

If the defendant takes out a judge's summons for time to plead, the plaintiff cannot sign judgment 'till the summons is discharged. ^{After summons judgment till summons discharged.} *Rep. and Cas. of Pract. C. P. 144. Barnes 240, 255.*

A plea of tender is not an issuable plea ^{Plea of tender.} within the meaning of a judge's order for time to plead, on pleading an issuable plea. *Rep. and Cas. of Pract. C. P. 134.*

Nor that plaintiff was an infant, and ought to sue by *prochein amy*, and not by attorney; for this is a plea in abatement, and consequently null and void. *Barnes 263.*

Nor a recovery in another court, for although this be an issuable plea within the letter of the judge's order, yet it is not within the true intent and meaning of it. *Wilf. Rep. C. P.* 117. 3 *Wilf. Rep.* 33 S. P.

Nor a general performance of covenants, not signed by council. *Barnes* 354.

Defendant obtained an order for time to plead, pleading an issuable (a) plea, rejoining (b) *gratis*, and taking short (c) notice of trial within term; defendant pleaded accordingly, and plaintiff replied; and then defendant, instead of rejoining, demurred, merely for delay; plaintiff not having time to set down demurrer to be argued within term, signed judgment; which defendant moved to set aside, but upon hearing council on both sides, court considered defendant's practice a mere trick, and therefore denied the motion. *Barnes* 271.

Stat. of limitations.

If judgment be set aside on payment of costs, and pleading an issuable plea, the defendant cannot plead the statute of limitations; for it is not an issuable plea within the meaning of the rule, for setting aside the judgment, the rule should be on pleading the general issue.

(a) Viz. a plea in chief, upon which plaintiff may take issue. *Barnes* 263.

(b) By which is meant rejoining without the common four-day rule. *Barnes* 271.

(c) On order for short notice, two days is the least. *Barnes* 301.

Defendant

Defendant cannot plead, "That no such letters of administration, as set forth in declaration, were ever granted to plaintiff," without craving oyer thereof, and setting them out in his plea. 2 *Wils.* 413.

If the defendant craves oyer, he shall have *What time the* as many days to plead after oyer given, as *defendant has* he had to plead at the time oyer was demanded. *to plead after* *oyer.* *Pract. Reg. C. P.* 26, 28, 300. *Rep. and* *Cas. of Pract. C. P.* 81. *Barnes* 238, 254.

If oyer be demanded after rule to plead is out, the plaintiff may sign judgment notwithstanding; but if the defendant has eight days to plead, he may demand oyer at any time within the eight days, notwithstanding the four-day rule to plead is expired. *Barnes* 268. See 2 *Wils.* 413.

If the defendant prays oyer and a copy of a bond, he is intitled to inspect it and have a copy of the whole, with the witnesses names, and a memorandum subscribed and indorsed. *On oyer defendant intitled to witnesses names and all indorsements.* *Barnes* 327.

If the defendant prays oyer, and afterwards delivers a plea without making the oyer part of it, the plaintiff may make up the issue with oyer; for the pleadings are supposed to be *Ore tenus* at the bar, and a record is to be made of what is done there. *If defendant makes the oyer no part of his plea, plaintiff may make it a part of the issue.* *Barnes* 327.

The defendant pleaded a release, with a *Within what* *Presert hic in curia*; on the 12th of *time the defendant ought to deliver oyer of a deed pleaded by him.* *November* the plaintiff craved oyer, and on the 14th signed judgment, for want of oyer being given him; and it was held that this judgment was regularly signed, that from the 12th to

the 14th was a reasonable time for the defendant to give the plaintiff oyer, and that the plaintiff had no need to apply to the court to set aside the plea; for, after oyer craved by the plaintiff, the defendant is bound to verify his plea. *Blaxland against Bergis, Mich. 7 Geo. 2. Pract. Reg. C. P. 301. Barnes 245. Rep. and Cas. of Pract. C. P. 95.*

Def. may waive his special plea, and plead the general issue.

The defendant may waive his special (d) plea, and plead the general issue the same term, without payment of costs or application to the court. *2 Will. 391.* but not *vice versa*, unless under special circumstances. See *2 Will. 253, 254.*

Sed. Q. If the plaintiff has replied, whether the defendant must not apply to the court and pay costs? See *Barnes 127.*

Can't withdraw a plea of tender.

After a plea of tender, and money brought into court, the court will not admit the defendant to withdraw his plea, and plead the general issue. *Barnes 349.*

Plea refused to be amended, though the application was before argument; defendant having likewise pleaded another plea in which issue was joined, trial had, and verdict for plaintiff. *Barnes 25.*

Plea of *plene administravit*, amended on payment of costs. *Barnes 25.*

(d) Not, if it be a sham plea. *2 Will. 369.*

Of double pleas.

D OUBLE pleas allowed, viz.—*Non assumpsit*, and *Non assumpsit infra sex annos*. *Barnes* 329. denied *Pract. Reg. C. P.* 307, 308, 39. *Double pleas allowed.*

Non assumpsit, and a discharge under the insolvent debtors act. *Pract. Reg. C. P.* 312. *Barnes* 343.

In replevin, leave given to avow two matters, viz. a justification of the distress under a lease for years, and that the goods distrained were not the property of the plaintiff. *Barnes* 338. *Pract. Reg. C. P.* 184.

In trespass *Non cul.* and *Liberum tenementum alterius*. *Barnes* 326, 340. *Pract. Reg. C. P.* 315. *Barnes* 351, 356 *Vide infra*.

Solvit et diem, and a mutual debt. *Barnes* 340.

Tender to part, and *Non assumpsit* to all the rest. *3 H. 11.* 145.

Damage tenant, and under a demise from the defendant to the plaintiff. *Barnes* 339. *Pract. Reg. C. P.* 315.

Damage tenant and for rent in arrear. *Pract. Reg. C. P.* 316. *Barnes* 340.

Non assumpsit, a set-off, and a tender, as of last term. *Barnes* 353, 357, 360, 366.

Non cepit. Cattle property of another person, not of plaintiff; and *liberum tenementum*. *Barnes* 364.

A tender to the first count, and *Non assumpsit* to the residue. *Barnes* 362.

Non

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Non assumpsit, and *Plene administravit*.
Barnes 348. Pract. Reg. C. P. 311, 312.

Plene administravit, and a set-off. *Pract.*
Reg. C. P. 313. Barnes 347.

Ne unques executor, and *Plene administravit*.
Barnes 355, 365.

Non est factum, and *Ne unques executor*.
Barnes 352.

Non est factum, and duress. Barnes 259.

Not guilty and a general release Barnes
347, 348.

Not guilty; and 4 guineas paid in satisfaction
of all trespasses to such a time. Barnes
349.

Not guilty, *Son assault*, and satisfaction
for all trespasses. Barnes 352.

Not guilty, *Son assault*, and *Molliter man-*
us impetit. Pract. Reg. C. P. 315. Barnes
351, 353, 354.

Not guilty, and a justification of trespasses.
Barnes 355, 356, 365.

Non est, and to avow the taking. Barnes
365.

Not guilty, and a tender of amends.
Barnes 366.

Double plea
denied.

Double pleas denied, viz.—*Non assumpsit*,
and a release, as contradictory. Barnes 320.
Pract. Reg. C. P. 311.

Non assumpsit, *Non assumpsit infra sex menses*,
and leave to bring money into court.

Non assumpsit, and infancy, because it may
be given in evidence. Barnes 363.

Soluit ad damnum, and *Et non per decem*, the
like. Barnes 352.

Non est factum, and *Solvit ad diem*. Barnes 363.

Liberum tenementum, and a justification, the like. Barnes 329.

Nil debet, and *Nil habuit in tenementis*, the latter may be given in evidence. Barnes 333. *Pract. Reg. C. P.* 314.

Not guilty, and *Liberum tenementum*, denied as (e) contradictory, and no affidavit being produced to verify that the defendant's case required both pleas for his defence. Barnes 350.

In trover Not guilty, and that plaintiff became a bankrupt and his effects assigned. Barnes 360.

Non assumpsit, and a tender. Barnes 366. 3 *Wils.* 145.

Not guilty, and a licence. Barnes 349, 364. without an affidavit, denied: where the pleas are contradictory, the defendant should make it appear by affidavit, that it is necessary for his defence to insist upon both. If the trespass be by cattle, the nature of the case is sufficient; an affidavit is not necessary, because the fact may not be in the party's knowledge; if by the party himself, he must move upon affidavit. Barnes 351.

Not guilty, and a release of a particular trespass, is never admitted, but a Not guilty and a general release has been admitted where

(e) Court, upon motion to plead *double*, never gives leave to plead *contradictory* matters. Barnes 290.

an affidavit has been produced. *Barnes* 351.

Leave to plead double any time before judgment. The defendant may have leave to plead double any time before judgment signed, though the rule to plead be out, but not before appearance. *Barnes* 329, 331.

Not after single plea. After the defendant has pleaded a single plea, he can't have leave to add another. *Barnes* 361.

Nor after money brought into court. After the defendant has paid money into court, he can't have leave to plead double. *Barnes* 339. *Pract. Reg. C. 2. 317*

Defendant cannot plead several matters in a *plea in abatement*.

*On double plea, if pt. has judgment in one, he can't enter a *Noli prosequi* as to the other.* The defendant, with leave of the court, pleaded *Noli prosequi* as to the first plea, and *Noli assumpsit infra* as to the second; to the first the plaintiff replied an original writ, and joined on *Noli prosequi* as to the second, and judgment for the plaintiff, whereupon he executed writ of inquiry, but did not proceed on the writ of *Indo assumpsit*. The defendant now sought to set aside the writ of inquiry; the plaintiff insisted he might enter *Noli prosequi* on the second plea of *Non assumpsit*, and take his execution on the issue that was found for him. The defendant insisted both pleas went to the whole declaration; and if any one issue was found for the defendant, the plaintiff was barred of his demand. *Curr.*

It is a judgment only as to part, and not upon the whole proceedings, and the inquiry could not be executed before the other issue was tried. The defendant has a double defence given him, and if any one be found for him, he shall be executed, therefore this writ of inquiry

quiry is wrong; and if this way of proceeding was to be allowed, there is an end of pleading double. *Prior v. Com. Hay Exec. Hil. 7 G. 2. Praet. Reg. C. P. 320.*

Action on a promissory note, double plea, *If either found viz. Non assumpsit, and I'bon assumpsit infra for the def. the sex annos*: To the latter the plaintiff replied *plaintiff can't recover.* an original, and on *Nul tiel record* had judgment; but on trial upon the *Non assumpsit* was nonsuited. On the issue in which he had judgment he executed a writ of inquiry, which the defendant moved to have set aside, and said, that the two pleas go to the whole; and if either be found for the defendant, the plaintiff cannot recover. It was urged for the plaintiff, that by the statute for the amendment of the law, where several matters are pleaded by the defendant, if any be found for the plaintiff, he shall recover. *Cur*: This is a consideration. Adjourned. *Postea* writ of inquiry set aside. *Prior v. Com. Hay Exec. Mich. 8 Geo. 2. Id. ib.*

When issue is joined, the plaintiff delivers *Def. to pay for* the defendant's attorney a copy thereof on *a copy of the* treble penny stamped paper, he paying for *issue, and en-* the same after the rate of 4 d. a sheet, besides *tring his* the duty; and for the entry of his plea, according to the length, if the general issue, only 2 s. and for filing his warrant of attorney 8 d. *v. postea fol.* But note, if the issue be of the same term with the declaration, and the defendant has paid for one copy of the declaration, he is only to pay for a copy of the pleadings subsequent to the declaration, for

for he is not obliged to pay for two copies of the declaration in the same term.

Where plt. appears for the def. he may charge it on the back of the issue.

If the plaintiff enter the appearance for the defendant, he may charge for it on the back of the issue, and if the defendant's attorney will not pay it, he may sign judgment.

Def't's attorney, if copy of issue overcharged, may tender what really due.

The practice was formerly, that the defendant's attorney must pay for the copy of the issue at all events, or the plaintiff might sign judgment; and if it be overcharged, the defendant might apply to the court. But now it is held, that if the defendant's attorney is ready to pay, and tenders what is really due, it is sufficient. Where the defendant is a prisoner, and no attorney appears to be concerned for him, the plaintiff cannot sign judgment for not paying for the copy of the issue.

How if d.f. be a prisoner, and no attorney concerned.

Method of making up the issue.

The method of making up the issue in this court is the same with the method used in the court of *King's Bench*, when the proceedings are by original; and when the proceedings in this court are by bill, the issue begins with a memorandum, as in the *King's Bench* on proceedings by bill. An issue by original begins thus:

In the Common Pleas.

Trinity term (the term the issue is joined) in the year of king
George the third.

Middlesex, *A. B.* late of *Westminster* in the
to wit. county of *Middlesex*, gentle-
man, was attached to answer *C. D.* of, &c.

[*to the end of the declaration*] And thereof he bringeth suit, and so-forth.

Then begin a new line, and enter the plead- *Venire facias*
ings to the end of the issue, after which fol- *awarded.*
lows the award of the *Venire* in this form.—
Therefore it is commanded to the sheriff, that
he cause to come here from the day of, *&c.*
(*some return before the day of trial*) Twelve,
&c. By whom, *&c.* And who neither, *&c.*
To recognize, *&c.* Because as well, *&c.*

In the Common Pleas.

*Trinity term in the seventeenth year
of the reign of king George the
third.*

HERETOFORE as it appeareth in the *Entry of an*
term of *Easter* last past in the 864. roll it *isue on a bill*
is thus contained. *Middlesex, to wit,* Be it re- *against an at-*
membred, that on the 25th day of *May* in this *torney, where*
same term *R. L.* came here into court by *L.* *the issue is*
R. his attorney, and exhibited to the justices *joined in a*
of our lord the king of the bench here his bill *term subse-*
against *M. U.* gent. one of the attornies of *quent to that*
the court of our said lord the king of the *in which the*
bench here present, here in court in his pro- *bill was filed.*
per person, in a plea of trespass on the case,
the tenor of which said bill followeth in these
words, *to wit,* To the justices of our lord
the king of the bench. *Middlesex, to wit,* *R.*
L. by *L. R.* his attorney complaineth against
M. U. gent. one of [*set forth the whole bill*
verbatim

verbatim to] And thereupon he prayeth relief, &c. Pledges of prosecuting *John Doe* and *Richard Roe*.

Imparlance.

And the said *M.* in his proper person cometh and defendeth the force and injury, when, &c. and prayeth leave to imparl thereupon here, until *Friday* next after the morrow of the *Holy Trinity*; and hath, &c. The same day is given to the said *R.* here, &c. And now here at this day cometh as well the said *R.* by his attorney aforesaid, as the said *M.* in his proper person. And upon this the said *R.* prayeth, that the said *M.* may answer to his said bill, &c. And the said *M.* as before defendeth the force and injury, &c. And saith, that he did not undertake and promise in manner and form as the said *R.* sheweth decareth against him; and of this he putteth himself upon the country, &c. And the said *R.* doth so likewise, &c. Therefore the sheriff is commanded that he cause to come here on _____ next after _____ Twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c.

See more of this among the pleadings at the end of the book.

In country causes issues to be delivered to the agent in town, and not to the country attorney.

In country causes the issue must be delivered to the agent in town, and not to the attorney in the country; and where it has been agreed between the country attorneys, that the issue should be delivered in the country, and has been afterwards tendered to the agent in town, and not paid for, judgment has been signed,

signed, and held regular. But where the defendant has pleaded by his country attorney, the issue may be tendered to the country attorney, and if not paid for by him, judgment may be signed. *Except.*

Every attorney shall enter his warrant of attorney in every suit upon record in court, on pain of 10*l.* and further punishment by imprisonment, at the discretion of the court. *Attorney to enter his warrant on record.*
Stat. 32 H. 8. c. 30. §. 2. made perpetual.
2 & 3 E. 6. c. 32. and vide stat. 18 Eliz. c. 14. §. 3.

Warrants of attorney are to be filed of the term wherein any exigent is awarded, deferred, murrer or issue joined, or judgment entered, which shall first happen, and to be filed upon or before the effoin-day of every *Trinity-Term*, and within one-and-twenty days after the end of every other term. *When to be filed.*
Titl. 14, 15. Car. 2.

Every plaintiff's attorney who shall prosecute any cause to issue, shall, upon the delivery of the copy of such issue, receive of the defendant's attorney the fee for filing his warrant therein; and in case the defendant's attorney shall refuse to pay for the same, the plaintiff's attorney may sign his judgment in like case, as if the defendant's attorney had refused to pay for the copy of the writ, or the entry of his plea; and the plaintiff's attorney shall file as well the defendant's as the plaintiff's warrant of attorney. *Def't's attorney, on receiving the issue, to pay the plaintiff's attorney the fee for filing his warrant, otherwise judgment.*
Titl. 2, 3. Jac.

The plaintiff's attorney in any action or suit shall file his warrant of attorney with the proper

warrant the
term he de-
clares, and
the deft.'s at-
torney the
term he ap-
pears.

proper officer the same term he declares, and the attorney for the defendant shall file his warrant of attorney, as aforesaid, the same term he appears, under the penalties inflicted upon attornies by any former law, for default of filing their warrants of attorney. *Stat. 4 & 5 Annæ. c. 16.*

No judgment
(except, &c.)
to be sign'd be-
fore the judg-
ment given to
be stamped by the
clerk of the
warrants.

Great inconveniencies having happened by attornies neglecting to file their warrants of attorney, by which judgments have been reversed, and plaintiffs lost their debts; it was ordered therefore that no judgments whatsoever (except final judgments upon *posseas*, writs of inquiry, and *Non pros**) shall be signed by any of the prothonotaries, unless the stamp of the clerk of the warrants be impressed on the paper, whereon such judgment is to be signed, whereby it may appear the warrants of attorney are duly filed. *Mich. 5 Geo. 2.*

The plaintiff's attorney, on delivering a copy of the declaration to the defendant's attorney, charges 8 *d.* for filing the defendant's warrant of attorney, and which he generally files at the same time he files the plaintiff's warrant, and on the same piece of parchment.

These warrants are to be wrote on parchment in the following form :

*Hilary Term in the seventeenth year
of the reign of George the third.*

Middlesex, *E. F.* putteth in his place *R. C.* *Plaintiff's*
his attorney against *A B.* late *warrant of*
of, &c. yeoman, in a plea of trespass on the *attorney.*
case [*or otherwise, as the action is.*]

Middlesex, *A. B.* late of, &c. yeoman, put- *Defendant's*
teth in his place *N. F.* his *warrant of*
attorney, against *E. F.* in the plea aforesaid. *attorney.*

If the defendant be described in the pleadings with an *Alias dict.* or the plaintiff or defendant be an executor or administrator, he must be named in the warrant of attorney in the same manner exactly as in the pleadings.

The nature of the action must be expressed in the warrant, according as the case shall be; as thus: In a plea of debt. In a plea of trespass. In a plea of trespass on the case. In a plea of trespass and ejectment of farm. In a plea of trespass and assault. In a plea of trespass, assault and imprisonment.

On the back of the issue you give notice of trial, thus:

Mr. T. V.

Take notice of trial in this cause for the *Notice of trial.*
sitting after this present *Michaelmas-term,*
at *Guildhall, London.*

Your humble servant,

Jan. 5th 1778.

*L. R. attorney for the
plaintiff.*

*Eight days in
London or
Middlesex.*

If the trial is to be in *London* or *Middlesex*, (and the defendant dwells within 40 miles of *London*) there must be eight days notice thereof given exclusive of the day whereon the notice is given. *Mich. 1654.*

*When 14 days
in London or
Middlesex.*

If the defendant lives above forty miles from *London*, there must be fourteen days notice of such trial to be had in *London* or *Middlesex*, exclusive of the day of the notice. *Same rule.*

*Eight days in
the country.*

Of trials in the country there must be eight days notice given exclusive of the day of notice. *Same rule.* But altered as follows.

*When ten days
notice of trial*

No cause whatsoever shall be tried at *Nisi prius* before any judge or justice of assize or *Nisi prius*, or at the sittings in *London* or *Westminster*, where the defendant resides above forty miles from the said city respectively, unless notice of trial in writing has been given at least ten days before such intended trial. *Stat. 14 Geo. 2. c. 17. §. 4.*

*This act does
not alter the
above rule,
for 14 days
notice of trial
in London or
Middlesex,
where the
defendant lives
above 40 miles
from London.*

Defendant lived about 40 miles from *London*, and plaintiff proceeded to trial at sittings there, upon *ten* days notice; no defence was made, and defendant insisting, that he was intitled to 14 days notice of trial, moved to set aside the verdict, and had a rule to shew cause, which was made absolute. Before this act, 14 days notice were the settled practice, and, unless obliged, court will not be bound by an act made to take away a benefit from defendant; the practice or law of the court cannot be taken away but by negative words, viz. that there shall be no

more than ten days; 14 days notice notwithstanding this act, are still necessary.

Barnes 305.

And in case any person shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing at least six days before such intended trial, such party shall be obliged to pay unto the party to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such notice of trial had not been countermanded. *And six days notice of countermand.* *Same stat. §. 5.*

Notice of trial on an old issue may be given to the attorney in the country, for it may be given either to the attorney or the agent, but where notice of trial is given on the issue book, it must be given to the agent, because the issue can be delivered no where but in town. Notices of trial, and countermands in notices of executing writs of inquiry and countermands may be given either to the attorney in the country, or to the agent in town; but of those things which are done only in town, notice must be given to the agent; and all notices, where the party hath a known attorney, must be given to that attorney or his agent, and not to the party himself. *Notice of trial when to be given to attorney or agent.* *Of notices in general.*

In all cases where there have been no proceedings for four terms, exclusive of the term in which the last proceeding was had, the party who desires to proceed again, shall give a term's notice to the other of such proceeding; such notice shall be given before the *A term's notice where no proceeding for four terms excluded.* *To be given before the es-*

Join day of the effoin-day of the fifth or other subsequent term; a judge's summons, if no order be

What deemed a proceeding.

made thereupon, shall not be deemed a proceeding; but a notice of trial, though afterwards countermanded, shall be deemed a proceeding within this rule. *Pasch. 13 Geo. 2.*

Where the plaintiff concludes ad patriam, the defendant to accept notice of trial on the back of the pleading.

Heretofore, where the plaintiff in pleading concluded *ad patriam* (to the country) he could not give notice of trial till the defendant had joined issue, which he was not obliged to do till a four-day-rule for that purpose was expired. But now in all cases where the plaintiff concludes *ad patriam*, the defendant's attorney must accept notice of trial on the back of such pleadings, whether the same be delivered to the defendant's attorney or agent, or left in the office; and such notice shall be as effectual as if issue had been joined. *Trin. 2 Geo. 1.*

And if defendant join in issue, to accept of notice of inquiry from the time of the notice of trial.

Where the plaintiff concludes *ad patriam*, and gives notice of trial on the back of the pleadings (pursuant to last rule) if the defendant does not join issue before the rule is out, then after judgment obtained the defendant's attorney shall be obliged to accept of notice or executing a writ of inquiry from the time that the notice of trial was given on the back of the pleading. *Trin. 6 Geo. 1.*

Notice of trial not to be given to the defendant if his attorney be known.

Notice of trial, or of executing a writ of inquiry, given to a defendant when his attorney is known, is not good notice; but when his attorney is not known, then the notice may be given to the defendant. See *Barnes* 300. See *id.* 306, 307.

Where

Where the plaintiff may give a short notice of trial, ^{Where the plt. may give short notice, he must give as much as he can.} as where the defendant has had time given him to plead on taking short notice of trial, the plaintiff must give him as much notice as he can; two days at least. *Barnes*

301.

If the plaintiff ought to give 14 days notice of trial, if he was to proceed to trial, and the defendant intends to have the cause tried by proviso, he must give the same notice of trial as the plaintiff should have done. ^{For trial by proviso def. must give the same notice as plaintiff should have done.} *Barnes*

299.

The next thing to be done is to enter the issue, and prepare the *Nisi prius* record for trial, which must be ingrossed on a piece of parchment stamped with a double half-crown stamp, which you must do in this manner:

In the Common Pleas.

Pleas at Westminster, before Sir
 • William De Grey, knight, and
his companions, justices of our
 • *Lord the king of the bench, of*
Fuller term in the sixteenth
year of the reign of our sovereign
George the third, by the grace
of God, of Great Britain, France,
and Ireland, king, defender of the
faith, &c.

Roll.

Middlesex, *C. L.* late of, &c. gentleman,
to wit, was attached to answer *R. R.*
 of a plea of trespass, on the case; and where-

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upon the said *R. R.* by *J. S.* his attorney complaineth, that whereas, *Et c. to the end of the issue and award of the Venire.*)

Note; In the *Common Pleas* the *Placita* is wrote but once, except on the death or change of a chief justice, or on an old record, in which case you write a second *Placita*; then your write the *Jurata* in this manner.

Middlesex, **T**HE jury between *R. R.* to wit, plaintiff, and *C. L.* late of, &c. gentleman, in a plea of * trespass on the case, are respited here until on the morrow of the Holy Trinity (the return of the *Habeas corpora juratorum*, and which should be the next return after the day of trial) unless Sir *Eardely Wilnot*, knight, the king's chief justice of the bench, here assigned by form of the statute in that case made and provided, shall come before, on Thursday, the day of [the day of the sittings] at Westminster, in the great hall of pleas, there, commonly called Westminster-hall, in the said county of Middlesex (if in London, say, at the Guildhall of the city of London aforesaid) for default of the jurors, because none came: Therefore let the sheriff have the bodies of the several persons mentioned in the panel annexed to the writ of *Habeas corpora juratorum*. And be it known

* In replevin say, taking and unjustly detaining the cattle of the said *R.*

that

that the justices here in court in this same term delivered a writ thereupon to the deputy of the sheriff of the county aforesaid, to be executed in form of law, &c.

If the trial is to be had at the assizes, the form of the *Jurata* is as follows :

Lincoln, **T**HE jury between R. R. plain-For the assizes.
to wit, Tiff, and C. L. late of, &c.
gentleman, in a plea of trespass on the case,
is respited here until on the morrow of *All*
Souls, unless our lord the king's justices, as-
signed to take the assizes in the county afore-
said by form of the statute in that case made
and provided, shall come before on (*the day*
the assizes are so be held) at (*the place where*
they are to be held) in the county aforesaid,
for default of the jurors, because none came:
Therefore, &c. (*as before.*)

When the *Nisi prius* record is prepared, you are to carry it, and the roll whereon you have entered the issue, to the proper prothonotary, who on being paid for the entry will mark both the record and roll; then you go to the clerk of the treasury, who will examine and see that the *Jurata* is rightly entered, and sign and seal the record.

No record of *Nisi prius* is to be signed be-No record of
fore the issue be entered upon the roll. *Mich.* Ni. Pri. to be
signed before
1654. *Pas. 5 W. & M.* issue entered.

And all issues are to be entered of the term
they are joined. *Pas. 5 W. & M. Hil. 11* Issues to be en-
Geo. 1. tered the same
term they are

Every joined.

In what manner records of Nisi prius are to be ingrossed.

Every record of *Nisi prius* is to be ingrossed in a fair legible character, and so entered on the roll; the beginning of every pleading to begin with a new line, and the first word in a greater character than the rest; and in all actions that have divers narrs, [*i. e.* counts] notice thereof must be given by figures in the margin of such record of *Nisi prius*; and all records of *Nisi prius* that shall be ingrossed in this court are to be of the exact breadth of the rolls of the court, and no broader or lesser. *Trin. 29 Cor. 2.*

Within what time they must be made up for the assizes.

Records of *Nisi prius* for trials at the assizes shall be signed by the respective prothonotaries, and signed and sealed by the clerk of the treasury within the space of three weeks next after the end of every *Hilary* term, and of every *Trinity* term, and not afterwards unless by special order. *Trin. 29 Cor. 2.*

No record of Nisi prius to be sealed, unless signed by the clerk of the warrants.

The clerk of the treasury shall not sign or seal any record of *Nisi prius*, unless the same shall be first signed or stamped by the clerk of the warrants. *Hil. 2, 3 Jac. 2.*

Attendance will be given for sealing records of *Nisi prius*, in this court, *viz.*

For *London* and *Middlesex* at the treasury office, in *Westminster-hall*, during the term, and the sittings for *Middlesex*, from the sitting to the rising of the court;

For *London* after the sittings for *Middlesex* are over, at the lord chief justice chambers, in *Serjeants Inn*, from 5 to 7 o'clock, in the afternoon during the sittings in *London*.

For

For the affizes, at the *L. C.* justice's chambers from 10 to 12 o'clock in a forenoon, and from 5 to 7 in an afternoon, as usual, during the time of the affizes. By notice fixed up in the common pleas office, tempore *Wilmot* Ch. J.

As no continuances are necessary to be inserted in the record of *Ni. Pri.* if defendant dies after issue joined, and before the day of *Ni. Pri.* suggestion thereof, and award of *Ven. Fa.* entered on the roll after trial, sufficient. *Barnes* 469.

No record or writ of *Ni. Pri.* is received at any sitting after Term in * *Middlesex*, unless delivered to, and entered with the marshal within two days after the last day of every term. Rule of *E. 2 Geo. 3. C. B.* *Barnes* 494.

The form of a Venire facias.

GEORGE the third, by the grace of *Venire facias:*
God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Essex*, greeting. We command you, that you cause to come before our justices at *Westminster*, on the morrow of the *Purification* of the blessed *Mary*, twelve free and lawful men of the body of your coun-

* Nor in *London*, unless entered the day before the day, to which the sitting is adjourned. Same rule. *Barnes* ib,

Duty 2
Signing 1
Seal . 0

1. 4. ty, each of whom has ten pounds of lands,
 2 0 tenements or rents by the year at least, by
 4 whom the truth of the matter may be better
 7 known, and who are in no ways of kin, ei-
 11 ther to *R. K.* the plaintiff, or to *J. W.* late
 of, &c. or to *W. S.* late of, &c. [*if the de-
 fendant be declared against with an Alias dict',
 or as an executor or an administrator, he must
 be here described as in the pleadings*] to make
 a certain jury of the county between the
 parties aforesaid, in a plea of taking and un-
 justly detaining cattle [*as the action is*] be-
 cause as well the said *J. W.* and *W. S.* (*the
 party who first takes the issue,*) as the said *R.
 K.* between whom the matter in variance is,
 have put themselves upon that jury; and
 have there the names of the jurors and this
 writ. Witness Sir *William De Grey*, knight,
 at *Westminster*, the 23d day of *January* in
 the seventh year of our reign.

Dickins.

Insert the cause of action in the *Venire* as
 the case shall be, thus :

<i>Debt.</i>	In a plea of debt.
<i>Case.</i>	In a plea of trespass on the case.
<i>Affault.</i>	In a plea of trespass and assault.
<i>Affault and imprisonment.</i>	In a plea of trespass, assault and imprison- ment.
<i>Ejectment.</i>	In a plea of trespass and ejectment of farm.
<i>Covenant.</i>	In a plea of breach of covenant.
<i>Replevin.</i>	In a plea of taking and unjustly detaining cattle.
<i>Detinue.</i>	In a plea of detaining goods, or writings.

If

If the defendant carries down the cause to be tried by ~~proviso~~, the writ runs thus :

And have here the names of the jurors and this writ ; provided always, that if two writs shall thereupon come to you, that you only return one of them to our said justices at *Westminster*, at the time aforesaid. *By proviso.*

You carry this writ to the prothonotary to be signed, for which you pay him 1*s.* 4*d.* and then to the seal office to be sealed, for which you pay 7*d.*

When you have this writ returned by the sheriff, you carry it to the clerk of the jury, and he will make out a writ of *Habeas corpora juratorum*, which you carry to the sheriff, and he also returns.

The form of the Habeas corpora juratorum.

GEORGE the third, by the grace of *Habeas cor-*
 God, of *Great Britain, France, and Ire-* *pora.*
land, king, defender of the faith, &c. To the *Officina brev.*
 sheriff of *E.* greeting. We command you, *140.*
 that you have before our justices at *West-*
minster, from the day of *Easter* in 15 days [*the* *s.* *d.*
day in bank the next return after the trial] or *Fi Ven.* 0 4
 before our justices assigned to take the assizes *Ha. Co.* 1 8
 in your county, by force of the statute in *Duty* 2 0
 that case provided, if they shall come before, *Seal* 0 7
 on the day of 4 7
 [*the day the assizes are held*] at [*the place where*]
 in your county, the bodies of the several per-
 sons

sons named in the panel annexed to this writ, jurors summoned in our court before our justices at *Westminster*, between *R. K.* plaintiff, and *J. W.* late of, &c. and *W. S.* late of, &c. of a plea of taking and unjustly detaining cattle, [*as the action is*] to make that jury; and have there this writ. Witnels Sir *William De Grey*, knight, at *Westminster*, the day of in the year of our reign.

Harrison.

The form of the Subpœna ad testificandum.

Subpœna ad
testificandum.

Duty
Signing
Seal

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To *A. B. C. D. E. F.* and *G. H.* greeting. We command, and firmly injoin you and each of you, that laying all other matters aside, and notwithstanding any excuse, you be in your proper persons before our justices at the assizes to be held, at [*the place where the assizes are to be held*] in the county of *S.* on [*the day when*] next ensuing, to testify and speak the truth in a certain matter of controversy pending undetermined in our court before our justices at *Westminster* between *A. B.* plaintiff, and *C. D.* late of *E.* in the said county of *S.* gentleman, defendant, in a plea of trespass; [*as the action is*] and this you are not to omit, nor is any one of you to omit,
under

under the penalty on each of you of one hundred pounds. Witness Sir *William De Grey*, knight, at *Westminster*, the day of in the year of our reign.

Cooke.

If the trial be to be had in *London*, you say thus,—That, &c. you be before Sir *John Eardley Wilmot*, knight, our chief justice of the bench at *Guildhall, London*, on [*the day of sittings*] to testify, &c.

If in *Middlesex* thus; before Sir *John Eardley Wilmot*, knight, our chief justice of the bench at *Westminster*, in the great hall of pleas there, called *Westminster hall*, to testify, &c.

This *Subpœna* you carry to the proper prothonotary to be signed, for which you pay 1 s. and to the seal-office to be sealed, for which you pay 7d. and then you make out tickets for each of the witnesses in the following form:

Mr. R. B.

By virtue of a writ of *Subpœna* to you directed, and herewith shewn unto you, you are ^{Subpœna ticket.} commanded personally to be and appear before his majesty's justices of assize [*or the chief justice as before directed, according as the case is*] at [*the place*] on the day of by of the clock in the noon of the same day, to testify the truth, according to your knowledge, in a certain cause now depending, and there

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there to be tried between *A. B.* plaintiff, and
C. D. late of _____ in the county of _____
gentleman, defendant, in a plea of trespass [*as the action is*] on the
part of the plaintiff [*or the defendant, if at his
instance subpaned*] and hereof you are not to
fail, upon pain of one hundred pounds. Dated the _____ day of _____
in the year of our Lord 1778, and in the _____
year of the reign of our sovereign
lord George the third, king of Great Britain,
&c.

J. R. attorney.

*Cause to be
entered with
marshal.*

Before you go to trial you must enter your
cause with the judge's marshal.

*Formerly four
days before the
day of trial.*

Causes to be tried in *London* or *Middlesex*
ought to be entered in the marshal's book
four days before the day of trial. *Mich.*
1654.

Now two.

But notwithstanding this rule, and though
there is none other to the contrary, two days
at this time are reckoned sufficient.

*Records to be
brought in be-
fore the sit-
ting after
term.*

Ne recipiatur shall be allowed to be enter-
ed for the sittings at *Nisi prius* after every
term, unless the records of *Nisi prius* and the
writs be made up and brought into court
on or before the days and sittings respective-
ly. *Hil. 8 Geo. 1.*

*On circuit
writ and re-
cord to be en-
tered together.*

In every cause to be tried in the circuits,
the writ and record shall be entered together,
and no record shall be received without the
writ. *Trin. 10 & 11 Geo. 2.*

*On circuit in
what time re-
cord to be*

No writ and record of *Nisi prius* shall be
received at the assizes in any county in Eng-
land,

land, unless they shall be delivered to, and entered with the marshal, before the first sitting of the court after the commission-day, except in the counties of *York* and *Norfolk*; and there the writs and records shall be delivered to, and entered with the marshal before the first sitting of the court, on the second day after the commission-day, otherwise they shall not be received. *Hil. 14 Geo. 2.*

Every cause shall be tried in the order in which it is so entered, without any preference or delay, unless it shall be made out to the satisfaction of the judge in open court, that it is impracticable or inconvenient so to do, who thereupon may make such order for the trial of the cause, so put off, as to him shall seem just. *Same rule.*

A list of the causes, when so entered as afore said, shall be made by the marshal, and forthwith fixed up in some public place in the *Nisi prius* court, there to remain during the whole time of the assizes. *Same rule.*

If the cause be to be tried in *London* or *Middlesex*, you pay, for entering the cause with the marshal, 13 s. 9 d. viz. the chief justice 10 s. 9 d. Marshal 2 s. Associate 1 s.

If the trial be at the assizes, the fee for entering the cause is but 11 s. 8 d. viz. the judge 6 s. 8 d. Clerk of assize 2 s. Marshal 2 s. Cryer 1 s.

If the plaintiff gives notice of trial for the assizes, and don't bring the trial on, he can't go down to trial again without new notice, unless by consent or rule of court.

In London or Middlesex may give new notice, before the day of sitting, for the next sitting.

Plt. can continue his notice but once.

But in *London or Middlesex*, if the plaintiff gives notice of trial for one sitting, and be not provided to proceed, he may give notice before that sitting, that he will try it at the next sitting. *Mich. 1654.*

The plaintiff cannot continue his notice of trial a second time, *i. e.* he can give short notice of trial but once; but if the full time be given by the notice of continuance the word *continue* will not vitiate the notice. See *Barnes 301. Rich. Pract. Reg. 394. Co. Cas. 146.*

Can't countermand and continue in the same notice.

The plaintiff gave notice of trial for the first sitting within term, then gave notice that he countermanded the notice of trial for the first sitting, and continued it for the second; the defendant made no defence at the trial, and the plaintiff had a verdict. But on a motion the court said the plaintiff could not countermand and continue in the same notice, and set the verdict aside. *Smith v. Hough, Hil. 11 Geo. 2. Barnes 301. Pract. Reg. C. P. 394. Rep. and Cas. of Pract. C. P. 146.*

If plt. don't proceed to trial according to notice, nor countermand, he shall pay costs.

In case the plaintiff gives notice of trial, and don't go to trial accordingly, the defendant upon motion shall have his costs of attendance, to be taxed by the prothonotary, unless the plaintiff countermand his notice in convenient time, or shew cause to be allowed by the court in excuse of such costs. *Mich. 1654.*

Both p't. and def. giving notice of trial, and neither proceeding to trial, each paid costs.

The defendant gave notice of trial by proviso, and the plaintiff also gave notice of trial; neither went on to trial, or countermanded, and both got rules for costs for not going on to trial; the prothonotary doubted whether both

both were intitled to costs, and the judges were of opinion, that as both sides gave notice of trial, and neither proceeded to trial, each side was intitled to costs. *Reading v. Grafton, M. 13 Geo. 1. Pract. Reg. 405.*

No countermand of trial at the assizes shall be good unless notice be given two days before the commission-day. *Mich. 5 Geo. 1.* The commission-day on a Monday, a countermand on the Saturday held to be regular. See *Barnes 305.*

And in London or Middlesex the countermand must be two days before the sitting for which notice was given. See *Barnes 298.* *In London and Middlesex.*

Antea, fol.

Notice of trial may be countermanded after the record is made a *Remanet*. *Countermand after record made a Remanet.*

Costs of a former assizes, when a cause is made a *Remanet*, not allowed, unless by consent of parties expressed in a rule or order entered into for that purpose. *Barnes 150, 153.*

Where cause goes off by consent on withdrawing a juror, and reference to arbitrators, and no award being made, cause is again brought on to trial; the costs of the first, shall attend the event of the second trial, as well in this case as that of a *Remanet*. Rule of II. term, 8 Geo. III.

(a) That is to say, *remains* untried without any fault of the parties, and is therefore on the front of the paper of causes for the next sitting. *Rayn. Read on stat. 2 Geo. II. chap. 23, 4to. p. 127, in notes.*

Costs for the future are to be allowed when a cause goes off, and *remains* to be tried, for want of jurors. 2 *Wils.* 366.

When on default of the plaintiff's going to trial the court shall give judgment of nonsuit.

Where issue is or shall be joined, and the plaintiff hath neglected or shall neglect to bring such issue on to be tried, according to the course and practice of the court, it shall be lawful for the judges at (b) any time after such neglect, upon motion made in open court (due notice having been given thereof) to give the like judgment for the defendant as in cases of nonsuit, unless the judges shall upon just cause and reasonable terms allow any further time or times for the trial of such issue. And if the plaintiff shall (c) neglect to try such issue within the time or times so allowed; then and in every such case the judges shall proceed to give such judgment as aforesaid. *Stat. 14 Geo. 2. c. 17. s. 1.*

Of obtaining judgment, as in case of a nonsuit, for not proceeding to trial, in due time.

If plaintiff doth not proceed to try his cause in due time, defendant is intitled to judgment as in case of a nonsuit, by virtue of the above statute; in order to obtain which, a rule must in the first place be given for plaintiff to enter the issue on record, (which is a four day rule, exclusive of the day of service) if he fails in this, defendant may

(b) The court was of opinion, that defendant ought to apply for judgment on this act, the very next term after default; *Barnes* 314. See *Id.* 318. but I conceive as the act is general, any time after such neglect, no court of justice can limit the time of application.

(c) This statute is founded on neglect. *Barnes* 315.

have

have the like judgment, as in case of a (d) nonsuit.

When the roll is brought in, either in pursuance of a rule or without, it will be necessary to give the officer (e) of the court, in whose custody the roll or record is, notice to produce the same; notice also must be given of the (f) motion, and there must be an affidavit of the state of the proceedings, of plaintiff's default in trying the (g) cause; and also of the service of the notice of motion; upon reading of which affidavits, and of the entry of the issue on record (b); court will make a rule for plaintiff to shew cause, why the like judgment should not be given for the defendant, as in the case of a nonsuit; which, upon no sufficient cause being shewn, will be ordered accordingly.

(d) *Barnes* 313.

(e) *Viz.* The clerk of the jurats, or the under clerk of the Treasury, Mr. *George Stubbs*, who resides near Old Palace Yard *Westminster*, and is Treasury-keeper, and as he lives so near the repository of the rolls of this court, the same being under the *Exchequer*, on the right hand, as you enter *Westminster Hall Gate*, from Old Palace Yard, you may meet with him or his clerk almost any hour in term time.

(f) But not a terms notice in any case. *Barnes* 308.

(g) Objection, by plaintiff's council, that, in order to support a motion on this act, there ought to have been an affidavit, *that the cause was not tried*; and it was allowed, and rule *Nisi* discharged. *Barnes* 316 This affidavit must not be sworn before plaintiff's attorney. *Barnes* 313.

(b) *Barnes* 313.

Causes held sufficient, by the court, to prevent a nonsuit on this act of parliament.

1. Plaintiff's own illness. *Barnes* 313.
2. That plaintiff's attorney died by the hand of God. *Barnes* 315.
3. That defendant, by some act of his, hindered the trial of the cause. *Barnes* 315, 498. See *Id.* 443.
4. Plaintiff's marriage, for thereby the suit is abated *de facto*. *Barnes* 314.
5. Plaintiff's witnesses being disabled with the gout. *Barnes* 316.

When a further time is granted, the court appoints a time for the trial, as at the next assizes, or at some sitting in *London* or *Middlesex*, according as where the action is to be tried. *Barnes* 313. If the defendant applies for costs for not going to trial, pursuant to notice, he has made his election, and cannot move for judgment, as in case of a nonsuit. *Barnes* 131, 314, 315, 316. Though further time for going to trial hath been given, yet upon reasonable cause it may still be enlarged, notwithstanding the word (*i*) *peremptory* in the rule. Such judgment may be given in an action *Qui tam*, &c. or replevin. *Barnes* 315, 316, 318. Where the excuse for not proceeding to trial, according to the rules of the court, is a sufficient excuse, the court, on

(i) The word *peremptory* in the rule doth not preclude the court from a further enlargement of the time, if they think it reasonable; it is wrong to insert the word *peremptory*, for the second excuse may be better than the first. *Barnes* 315.

giving further time, will not make the plaintiff pay the costs of the application, but only the costs for not proceeding to trial.

Barnes 316, 317, 318.

You cannot, on notice of trial for the sittings after term, enter a *Ne recipiatur* till after proclamation made for bringing the records in.

For trial at sittings after term, no Ne recipiatur till after proclamation.

Motion to put off a trial, for that a material witness is out of the way, and cannot be had at the trial, must be made at least two days before the day for which the notice of trial was given.

Motion to put off a trial sub.n.

Rep & Cas. of Pract. C. P. 9, 105, 150. *Pract. Reg. C. P.* 399, 400.

Barnes 437, 440, 442, 444.

But if it appears that this witness, who is sworn to be a material witness, went out of town or abroad beyond sea after the notice of trial was given, the court will not put off the trial for it; the defendant might have subpoena'd him in time.

Not to be granted if the witness was in the way when notice of trial given.

Barnes 437.

The person, or party, who shall apply for a special jury, shall not only bear and pay the fees for striking such jury, but shall also pay and discharge all the expences occasioned by the trial of the cause by such special jury; and shall not have any farther or other allowance for the same, upon taxations of costs, than such person or party would be intitled unto, in case the cause had been tried by a common jury; unless the judge, before whom the cause is tried, shall, immediately after the trial, certify in open court under his hand, upon the back of the record, that the

Party applying for a special jury to pay the whole expence;

and not allowance more than for a common jury.

Unless, &c.

same was a cause proper to be tried by a special jury. *Stat 24 Geo. 2. c. 18.*

What allowance to such jury for serving.

No person who shall serve upon a special jury, or be returned, shall be allowed or take for such serving on any such jury, more than the judge who tries the cause shall think just and reasonable, not exceeding 1*l.* 1*s.* except in causes wherein a view hath been directed
Same stat.

Venire on a penal stat. to be de corpore com'.

Every *Venire* for the trial of any issue in any action or information, upon any penal statute, shall be awarded of the body of the proper county where such issue is triable.
Same stat.

On trials at bar, plt.'s attorney to give notice of the day to chief prothonotary.

On trials at bar, which are to be moved for, the plaintiff's attorney must before the es-join-day of the term, in which the cause is appointed to be tried, give notice to the chief prothonotary or his secon'ary, of the day on which such cause is to be tried, that the same may be put down in the court-book; and in case of neglect, and without motion and special direction of the court, such cause shall not be tried that term. *Hil. 9 Ann.*

On trials at bar, judges to have copies of the issues 4 days before trial.

On trials at bar, the lord chief justice and the other judges are to have copies of the issues in such causes delivered to them four days before the time appointed for trial.
Mich. 3 Geo. 2.

Clerks of assize and associate to return Postea's.

Every clerk of assize, and the associate to the lord chief justice, shall make returns of *Postea's* upon records issuing out of this court, whereupon any proceedings have been by virtue of any writ of *Nisi prius*, *Distingas*, or *Habeas corpora juratorum*, and cause the same

to be delivered to the respective prothonotaries, upon the *Quarto die post* of the return of the writ of *Nisi prius* in bank, under the penalty of 20 l. And, that all excuses may be taken away, the respective clerks of assize and associate at the trial shall take the fees due to them respectively for the return of every such *postea*. *Pascb. 2 Jac. 2.*

After the trial is over, and the record is returned with the *postea* ingrossed, you get the *postea* stamped with a double half-crown stamp, and apply to the prothonotary to tax your costs, and then deliver the record and *postea* to the clerk of the judgments, who continues the same on the roll, and awards judgment.

Where final judgment shall be signed upon a *postea*, the *postea* shall immediately be left with the clerk of the judgments of the prothonotary, and shall not afterwards be taken out of the office without leave of the court. *Trin. 13 Geo. 2.*

In case a special verdict be found, the plaintiff's attorney must enter the proceedings to the end of the special verdict on record, and deliver it to the secondary in court, and get a serjeant to move for a *Concilium*, or day for argument, then draw up the rule, and serve it on the defendant's attorney.

In causes entered in the court-book for argument at the bar on special verdicts or demurrers, the attornies concerned in the cause shall deliver true copies of the record to the respective justices of the court, by the space of one week at least next before the day appointed

Postea to be left with clerk of the judgments.

Of special verdicts.

Paper-books on special verdicts or demurrers how to be delivered.

pointed for such argument; namely, the attorney for the plaintiff, one copy thereof to the lord chief justice, and another to the senior judge; and the attorney for the defendant like copies to each of the other two justices. *Pasch. 27 Car. 2.*

No argument till books delivered.

No arguments by counsel on either side shall be heard at the bar, until books be delivered to all the judges. *Same rule.*

If either neglects, the other side may deliver all the books.

In case the attorney of either party shall not deliver books as he ought; then if the attorney on the other side, for expediting his client's cause, will deliver books to all the judges three days at the least before the argument, counsel shall be heard on his client's behalf, at the day appointed, and the attorney delivering books as aforesaid shall be reimbursed the charges of delivering the two books, which ought to have been delivered by the attorney of the adverse party, which charges the said attorney shall be bound to pay upon the demand thereof. *Same rule.*

And be reimbursed by the attorney making default.

If not paid before judgment, to be allowed in costs.

If the charges of delivering the said two books shall not be paid before judgment shall be given in the cause, the charges of delivering the said books shall be allowed upon taxing costs, and in that case the attorney shall not be compelled to pay the said costs; but if no costs are to be taxed in the case, then the attorney making default in delivering of the books as aforesaid, shall be compelled to pay the charges of the copies so delivered by the attorney of the adverse party, by attachment or otherwise, as the court shall think fit. *Same rule, vide postea.*

If no costs, attachment against attorney making default.

A motion in arrest of judgment must be made within the first four days, *i. e.* before, or on the appearance day of the return of the *Habeas corpora juratorum*. *Barnes 445.* *Motion in arrest of judgment, when.*

If the motion be on the last day of term, the party, who moves an arrest of judgment, must produce an affidavit, that he has given notice of his motion to the other side. *Notice, if on the last day of term.*

After a motion in arrest of judgment the party can't move to set aside the verdict, unless it be upon a matter disclosed after the motion in arrest of judgment, and the motion to set aside the verdict be made before judgment pronounced. See *Barnes 441, 443.* *Not after motion to set aside verdict; unless, &c.*

Verdicts have been frequently set aside for excessive damages, but never for smallness of damages; but see *Barnes 448, 455.* *Verdict set aside for excessive damages.*

A motion for a new trial can't be made after the appearance-day of the return of the *Habeas corpora juratorum*, unless the foundation of the motion be some matter discovered afterwards. *Motion for new trial.*

Where the issue lay on the defendant, as *Solvit ad diem, Son assault, &c.* and the defendant's witnesses have been examined, the court seldom grants a new trial. *Seldom, when issue lay on defendant.*

In ejectment, where a verdict is for the defendant, it is not usual to grant a new trial, because the plaintiff may bring a new ejectment, and no other disadvantage happens to him; but where the verdict is for the plaintiff, a new trial is often granted; for then the consequence of not granting a new trial is the alteration of the possession of the premises. See *Barnes 440.* *Seldom in ejectment, if verdict pro D. aliter if pro Q.*

When

When final judgment is obtained, the party is to proceed to execution; of which see hereafter.

As we spoke of issues triable by juries, we shall say something of issues triable by the judges, or by record, as on demurrers, and pleas of *Nul tiel record*.

Of demurrers.

General demurrer to a declaration.

AND the said *W.* by *A. R.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said declaration in form aforefaid made and declared, and the matter therein contained, are not sufficient in the law for the said *S.* to have or maintain his said action against him the said *W.* and that he the said *W.* hath no need, nor is he obliged by the law of the land to answer the said declaration in manner and form aforefaid made and declared: And this he is ready to verify: Wherefore for want of a sufficient declaration in this behalf, the said *W.* prayeth judgment, and that the said *S.* may be barred from having his said action against him the said *W.* &c.

Joinder.

And the said *S.* inasmuch as he hath above declared sufficient matter in the law to have and maintain his said action against the said *W.* which he is ready to verify; which said matter the said *W.* hath not denied, or given any answer thereto, but intirely refuseth to admit the verifying the same; the said *S.* prayeth judgment, and his damages by occasion

caſion of the premiſſes to be adjudged to him, &c.

And becauſe the juſtices here will adviſe Concilium. themſelves of and upon the premiſſes before they give their judgment thereon, day is given to the ſaid parties here from the day of St. *Martin* in fifteen days to hear their judgment, for that the ſaid juſtices here are not yet adviſed thereof, &c.

And the ſaid *R. D.* by *T. C.* his attorney ^{3 Lev. 130.} cometh and defendeth the force and injury, <sup>Special demur-
rer to a writ
and declara-
tion, at the
read to him in theſe words, to wit, George ſuit of any at-
torney.</sup> when, &c. and cravethoyer of the ſaid writ of our lord the king of privilege; and it is read to him in theſe words, ^{Oyer of the writ.} to wit, *George ſuit of any attorney.* the ſecond, &c. [ſetting forth the whole writ *in hæc verba.*]. Witneſs Sir *Robert Eyre*, knight, at *Weſtminſter*, the third day of *July*, &c. which being read and heard, the ſaid *W.* prayeth judgment of the ſaid writ and declaration aforeſaid of him the ſaid *W.* becauſe he ſaith, that the ſaid writ, and the declaration thereupon aforeſaid, in manner and form aforeſaid made and declared, and the matter in them contained, are not ſufficient in the law for the ſaid *W.* to have and maintain his action aforeſaid againſt him the ſaid *R.* to which ſaid writ and declaration in manner and form aforeſaid made and declared he had no need, nor is he by the law of the land held or obliged, in any manner to anſwer; And this he is ready to verify; wherefore, and for want of a ſufficient writ and declaration in this behalf, the ſaid *R.* prayeth judgment, and that the ſaid *W.* from his action aforeſaid may be debarred, &c. and for cauſes of demurrer

*Writ tested.
before the
cause of action.*

Variance, &c.

*Day for plain-
tiff to join in
demurrer.*

*Plaintiff
makes default.*

*Judgment
against the
plaintiff.*

murrer in law in this behalf he the said *R.* according to the form of the statute in such like cases made and provided, sheweth to the court these following; that is to say, for this, that it appeareth to this court, that the same writ of our said lord the king of privilege was had and sued out upon the third day of July in the eighth year of the reign of our said lord the king, which day of suing out thereof was before the day on which the said *W.* has in his said declaration thereupon alledged and declared, that the said trespasses, assaults, batteries, woundings and imprisonments, charged upon him the said *R.* in and by the said declaration, were done and committed; and also for this, that between the writ and declaration are diverse variances; and also for this, that the said declaration in form aforesaid made and declared is in itself repugnant, insensible, contradictory, and wanteth form, and so forth; and hereupon the said *R. D.* demandeth the aforesaid *W. O.* to join in demurrer with him the said *R.* And hereupon a day is given by the court of our said lord the king of the bench here, to the said *W.* before his majesty's justices at *Westminster*, until next after to join in the demurrer in law with the said *R.* And the said *W.* at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said *R.* further prosecuted, but he made default: Therefore it is considered, that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, to wit, *J. D.* and *R. R.*

R. R. be thereof in mercy, &c. and that the said R. do go thereof without day, &c. And further it is considered by the court here, that the said R. recover against the said W. 3*l.* 16*s.* 8*d.* for his expences and costs by him about his defence in this part sustained, to the said R. by the court here, according to the form of the statute in such case lately made and provided, adjudged, &c. and that the said R. have his execution for the same, &c.

And the said C. saith, that the aforesaid *General demurrer to a plea.* plea of the said P. above pleaded in bar, is not sufficient in law to bar him the said C. from his said action against the said F. and that he the said C. hath no need, nor is bound by the law of the land, to answer to the said plea in manner and form aforesaid pleaded; and this he is ready to verify: Wherefore for default of a sufficient plea in this behalf the said C. prayeth his said debt, together with his damages by occasion of detaining that debt, to be adjudged to him, &c.

And the said F. for that he hath above al- *Joinder.* ledged sufficient matter in law to bar the said C. from having his said action against him the said F. which he is ready to verify, which said matter the said C. hath not denied, nor any ways answered thereunto, but wholly refuseth to admit the verification thereof, prayeth judgment, and that the said C. may be barred from having his said action, &c. And because the justices, &c.

And the said J. S. and M. by C. B. their *Demurrer to declaration for injury, not alledging* attorney, come and defend the force and injury,

that administration was granted to defendant.

injury, when, &c. and pray judgment of the said declaration: Because they say, that the said declaration and the matter therein contained are not sufficient in law to maintain the action of the said *D.* against them the said *J. S.* and *M.* to which said declaration the said *J. S.* and *M.* have no need, nor are they obliged by the law of the land to answer; and this they are ready to verify: Wherefore for want of a sufficient declaration in this case, the said *J. S.* and *M.* pray judgment of the said declaration, and that the same may be quashed, &c. And the said *J. S.* and *M.* according to the statute shew the causes of demurrer following, *to wit*, that it is not alledged in the said declaration how, or by whom letters of administration were granted; nor is it alledged that administration was ever granted to the said *J. S.* and *M.* And also that the said declaration is uncertain and wanteth form.

Special demurrer to a plea of Nil debet to a bail bond.

And the said *E. H.* saith, that the said plea of him the said *F. S.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *F.* and that he the said *E.* hath no need, nor is he obliged by the law of the land to answer the said plea of him the said *F.* in manner and form aforesaid above pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this behalf the said *E.* prayeth judgment, and that his said debt, together with his damages by reason of the detaining of that debt, may be adjudged to him,

him, &c. And for causes of demurrer in *Causes of de-*
Law in this behalf, the said *E.* according to *murrer.*
the form of the statute in such cases made
and provided, sheweth to the court here these
causes following; (that is to say) for this, that
the said *F. S.* hath not by his said plea parti-
cularly denied nor confessed the said deed in
the said declaration alledged; and also for
this, that the said *F.* is estopped by the said
deed to say, that he doth not owe the money
in the said deed mentioned, and ought to have
shewn by his plea how he is discharged from
the same.

And the said *F. S.* saith, that the said plea *Joinder.*
by him the said *F.* in manner and form afore-
said pleaded, and the matter therein con-
tained, are good and sufficient in the law to
bar the said *E.* from having his said action
against him the said *F.* which said plea, and the
matter therein contained, he the said *F.* is
ready to verify; and because the said *E.* to
the said plea hath not answered, nor the same
hitherto in any manner gainsaid, he the said
F. doth pray judgment, and that the said *E.*
may be barred from having against him the
said *F.* his action aforesaid, &c.

Judic. pro Q.

And the said *A.* saith, that the said plea *Demurrer to*
of the said *J.* above by replying pleaded, and *a replication.*
the matter therein contained, are not sufficient
in the law for the said *J.* to have and main-
tain his said action against him the said *A.* and
that he hath no need, nor is he obliged by
the law of the land to answer to the said plea
in manner and form aforesaid pleaded; and

this he is ready to verify: Wherefore for defect of a sufficient plea in this behalf the said *A* prayeth judgment, and that the said *J.* may be barred from having his said action against him the said *A.* &c.

Joinder.

And the said *J.* for that he has above by replying alledged sufficient matter in the law, for him the said *J.* to have and maintain his said action against the said *A.* which the said *J.* is ready to verify; which matter the said *A.* doth not deny, nor any ways answer thereto, but intirely refuseth to admit the verifying thereof; the said *J.* as before prayeth judgment, and his said debt, together with his damages by occasion of detaining that debt, to be adjudged to him, &c. And because, &c.

*Demurrer to
a rejoinder.*

And the said *J.* saith, that the said plea of the said *M.* above by rejoinder pleaded, and the matter therein contained, are not sufficient in the law to bar the said *J.* from having his said action against the said *T.* And that he hath not need, nor is obliged by the law of the land to answer to the said plea in manner and form thereof pleaded; and this he is ready to verify: Wherefore the said *J.* as before, prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Joinder.

And the said *T.* for that the matter afore-said by him above by rejoinder alledged (which he is ready to verify) is sufficient in the law to bar the said *J.* from having his said action against him the said *T.* which said mat-
ter

ter the said *J.* hath not denied, nor any ways answered thereto, but intirely refuseth to admit the verifying the same, prayeth judgment, and that the same *J.* may be barred ^{3 Lev. 187.} from having his said action against him, &c.

When demurrer is joined, the plaintiff's attorney makes up the demurrer book, and delivers a copy of it on treble penny paper to the defendant's attorney, who must pay him for it after the rate of 4 *d.* per sheet, besides the duty, and also for entering his pleadings and warrant of attorney; then the plaintiff's attorney enters the whole proceedings on the roll, and having delivered it to the secondary gets a serjeant to move for a *Concilium*, or day for arguing the demurrer, and the secondary draws up a rule accordingly, which must be served on the defendant's attorney, and the demurrer put down in the book for argument. ^{*Of going to argument on demurrer.*} It will be irregular to move for a *Concilium* before the paper book is delivered to defendant's attorney; and for this irregularity, court ordered cause to be struck out of paper. *Barnes* 163.

As to delivering the paper books, *vide antea* fol. *Rule, Pas. 27 Car. 2.*

The plaintiff's attorney shall deliver all the demurrer books to the lord chief justice and the rest of the judges, and the defendant's attorney shall pay the plaintiff's attorney for two of the said books two days at least before the day appointed for arguing such demurrer ^{*As to delivering the paper books.*}

and the defendant shall not be heard by his counsel when the cause comes on to be argued, unless the said two books be accordingly paid for. *Mich. 6 Geo. 2.*

Where in cases of demurrer deft.'s attorney obliged to accept notice of inquiry.

Where the defendant demurs to the declaration, his attorney shall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and where the defendant pleads such a dilatory plea that the plaintiff is obliged to demur, the defendant's attorney shall be obliged to accept of notice of executing a writ of inquiry on the back of such demurrer. *Trin. 10 Geo. 1.*

In judges books counsels names, number roll, and day of argument to be set down.

Per Curiam: For the future in all demurrer books delivered to the judges, let the counsels names be inserted who signed the pleadings, and let the number roll, and day of argument be set down on the outside of each book. *Trin. 17 & 18 Geo. 2. Barnes 164.*

Proceedings on issues upon Nisi tuel record.

Declaration in London, R. D. late of London, carpenter, vs. L. P. of a plea, that he render to him 62l. of lawful money of Great Britain, which he oweth him and unjustly detaineth, &c. and whereupon the said L. by J. C. his attorney suith, that whereas the said L. heretofore, that is to say, in Easter term in the fourth year

to wit, was summoned to answer unto *L. P.* of a plea, that he render to him 62l. of lawful money of *Great Britain*, which he oweth him and unjustly detaineth, &c. and whereupon the said *L.* by *J. C.* his attorney suith, that whereas the said *L.* heretofore, that is to say, in *Easter term* in the fourth year

year of the reign of his present majesty king George the second, in his said majesty's court, before Sir Robert Eyre, knight, and his brethren, then his majesty's justices of the bench here, at *Westminster* in the county of *Middlesex*, by the consideration of the said court recovered against the said R. 62*l.* which were adjudged to the said L. in the said court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said L. by the said R. then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said R. is convicted, as by the record and proceedings thereof now remaining in his majesty's said court here more fully and at large appeareth, which said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied; and the said L. hath as yet obtained no satisfaction of the aforesaid judgment, whereby an action hath accrued to the said L. to demand and have of the said R. the said 62*l.* yet the said R. although often requested, hath not rendered the said 62*l.* or any part thereof to the said L. but to render the same to him hitherto hath denied, and still doth wholly deny, to the damage of the said L. 20*l.* And thereof he bringeth suit, &c.

And the said R. by *W. W.* his attorney co-*Pla* Nul tiel meth and defendeth the force and injury, record. when, &c. and saith, that the said L. ought not to have his said action against him, because he saith, that there is not any such re-

cord of recovery of damages aforesaid against him the said *R.* in his said majesty's court, before Sir *Robert Eyre*, knt. and his brethren, his majesty's justices of the common bench, as the said *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the said *L.* ought to have his said action thereof against him, &c.

Replication.

And the said *L.* saith, that he by any thing before alledged ought not to be barred from having his aforesaid action maintained against the said *R.* because he saith, that there is such a record of recovery against him the said *R.* in his said majesty's court of common bench here remaining, as by the said declaration is above alledged; and this he is ready to verify by the said record, &c. He prayeth, that the said record may be inspected and seen by the justices here, &c. And because the said *L.* hath not the said record now ready here in court, it is said by the said court here to the said *L.* that he have the said record here on

The same day is given to the said *R.* here, &c.

Rule for judgment - On bringing the record into court on the next day given, the secondary of court draws up a rule for judgment *Nisi causa* within four days, and at the expiration of that time the secondary certifies at the foot of the rule that no cause hath been shewn, after which judgment may be signed.

Judgment.

The clerk of the judgments enters up the judgment.

The

The plaintiff must bring in the record at the day he has given himself, or the court will not receive it.

And the aforesaid *T.* by *J. D.* his attorney *Recovery in a former action per curiam in bar.* cometh and defendeth the force and injury, when, &c. and saith, that the said *T.* ought not to have or maintain his said action against him, because he saith, that over making the several promises and assumptions in the said declaration mentioned, and before the day of obtaining the original writ of the said *T. to wit*, in the term of St. Michael in the present—year of the reign of the now king before Sir Robert Lyne, knight, and his companions, justices of our said lord the king of the bench at *Westminster*, by bill, without the writ of the same king, and by the consideration of the said court, recovered against the same *T. & T.* for his damages which he had sustained as well by the non-performance of the several promises and assumptions in the said declaration mentioned, as for his costs and charges which he has paid and put in that behalf paid and expended, as by the record and judgment of the said court of our said lord the king of the bench at *Westminster* fully appeareth. And the said *J.* avereth, that the promises and assumptions in the said record mentioned, and the promises and assumptions in the said declaration above mentioned, are the same promises and assumptions, and not over or different; and thus the said *J.* is ready to verify: Whereupon he prayeth judgment, if the said *T.*

*Replication,
Nul tiel re-
cord.*

ought to have or maintain his said action against him, &c.

And the aforesaid T. saith, that he by any thing alledged by the said J. in the above pleading ought not to be precluded from having his action aforesaid against the said J. because he saith, that there is not any such record of the said recovery against the said J. at the suit of the said T. as he the said J. above in pleading hath alledged; and this he is ready to verify: Whereupon he prayeth judgment, and that his said damages may be adjudged to him, &c.

Rejoinder.

And the aforesaid J. saith, that there is a record of the said judgment as the said J. above in pleading hath alledged; and this he is ready to verify by the said record, and prayeth, that the said record may be seen and inspected by the justices here. And because the said record is not now had here, it is commanded the said J. that he have here the said record in

*Day given to
produce the re-
cord.*

(the day) at his peril. The same day is given as well to the said T. as to the said J. here, &c. At which day come here as well the said T. as the said J. by their said attornies, and the said J. hath not here the said record, but maketh default; whereby it sufficiently appeareth to the said justices here, that there is not any such record of the said recovery, as the said J. hath above alledged; Wherefore, &c. (*Judgment.*)

*Def. fails in
producing the
record.*

¶ If there was not here a complete issue upon the replication, and the rejoinder unnecessary.

And

in the Court of Common Pleas.

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And the said T. by F. K. his attorney co-
meth and defendeth the force and injury, when, &c. and saith, that the said J. ought not to have his aforesaid action against him the said T. thereon, because he saith, that one C. T. heretofore (that is to say) in *Easter* term in the fifth year of the reign of his present majesty, by an original writ impleaded the said J. by the name of J. H. late of *London*, gent. in the court of the said now king, before the king himself (the said court then and still being at *Westminster* in the county of *Middlesex*) in a plea of trespass; and the said J. because he did not appear in his said majesty's court before the said king, to answer unto the said C. in the aforesaid plea, according to the law and custom of this realm, was put in exigent to be outlawed in *London*; and for that reason afterwards, *to wit*, on *Monday* next before the feast of the purification of the blessed virgin *Mary* in the sixth year of the reign of his present majesty, in the said court of our said lord the now king before the said king himself, was outlawed in due form of law at the suit of the said C. in the said plea, and still remaineth outlawed, as by the record and proceedings thereof in his said majesty's court, before the king himself at *Westminster* aforesaid returned, and now there remaining, may more fully appear; and this he is ready to verify by the said record: Wherefore he prayeth judgment, whether the said J. ought to have his said action therefore against him.

*That the pls.
is outlawed in
another court.*

And

*Replication,
Nul tiel re-
cord.*

And the said *J.* saith, that ~~he~~ by any thing by the said *T.* in his plea above alledged, ought not to be barred from having his said action against him, because he saith, that there is not any such record of outlawry in his said majesty's court before the king himself, as the said *T.* by his said plea hath alledged; and this he is ready to verify in such manner as the court shall award. And the said *T.* is commanded that he have the said record here on the morrow of the ascension of our Lord at his peril; and the same day is given to the said *J.* here, &c. At which day here come as well the said *J.* as the said *T.* by their attornies aforesaid; and the *T.* hath not here the said record, but maketh default thereof: Wherefore, &c.

*Day given to
produce the re-
cord.*

*Def. makes
default.*

*Notice of in-
quiry on issue
of Nul tiel re-
cord.*

Upon an issue of *Nul tiel record*, notice of executing a writ of inquiry may be given upon the issue-book, as well as upon a joint declaration. *Long against Longwood, Hil. 8 Geo. 2. B. 165 239. Pract. Reg. C. B. 443.*

*When a four
day rule on i-
sue of Nul tiel
record is in-
cessary.*

Where the judgment upon an issue of *Nul tiel record* is final, the rule should be, unless cause within four days, that the defendant may have that time to move in arrest of judgment; but where the judgment is interlocutory, that reason fails, and a two day rule hath been held sufficient, because the defendant may move in arrest of judgment after the inquiry executed. Where the proceeding is by original, and a general return day is given to bring in the record, the defendant ought to be called to bring in the record at the rising of the court on that day, and if

*Defence
where pro-
ceedings by
original, and
by bill.*

he

he fail, the rule for judgment should be, unless cause on the appearance day of that return, and the record may be brought in on that day or any other intervening day. But where the proceedings are by bill against an attorney, and the day given to bring in the record is a day certain, the record cannot be brought in after that day; but on that day, at the rising of the court, the defendant ought to be called to bring in the record, and if he fail, the court will appoint the day to be inserted in the rule for judgment *Nisi causa*.

Rule to shew cause why defendant should not *reply* to several matters to a plea in bar to an avowry, *ditch v. ed*; because no instance can be shewn of several matters replied since *stat. 4 Ed. chap. 16.* for though the words of the statute are, to plead as many matters, &c. and *Replikations*, rejoinders, &c. are properly pleadings, yet the courts of *Westminster* have never carried their leave further than as afore mentioned. *Barnes 364.*

Of judgments by default.

IF the defendant does not plead by the *Of entering* time limited by the rules of the court (for judgment by which see before, *fil.* &c.) the *default.* plaintiff may sign his judgment with the prothonotary, in whose office the proceedings are entered. In debt the judgment is final, and signed on a double half-crown stamp; but in trespass, trespass on the case, &c. the first judgment is only interlocutory, and not final, till

till the inquiry is returned, when you get the inquisition stamped with a double half-crown stamp, and then the prothonotary taxes your costs *de incremento*, which is called signing the final judgment.

In entering your judgment you leave about an inch margin, and begin about ten inches from the top of the roll, the declaration thus :

Judgment in debt.

London, *C. D.* late of *London*, merchant, *to wit.* *C.* was attached to answer *A. B.* in a plea of trespass on the case; and whereupon, &c. (*to the end of the declaration*) And thereof he bringeth suit, &c.

Then beginning a new line, you enter the judgment in the following manner :

By Nil dicit.

And the said *C. D.* by *C. H.* his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the action of the said *A. B.* by which the said *A. B.* remaineth thereupon undefended against the said *C.* Therefore it is considered that the said *A.* recover against the said *C.* his said debt, and his damages by oc-

Judgment signed 5 May 1767.

Day of signing judgment to be set down.

By the statute 29 Car. 2. c. 3. s. 14. perpetuated by 1 Jac. 2. c. 17. s. 5. Any judge or officer of any of the courts at *Westm. p. r.* who shall sign any judgment, shall at the time of signing it (without fee) set down the day and year of his so doing upon the paper-book, docket or record, which day and year shall be set down on the margin of the roll of the record where such judgment shall be entered.

caſion

in the Court of Common Pleas.

casion of the detaining the said debt to 53 s. by the court here adjudged to the said *A. B.* by his assent. And the said *C.* in mercy, *Mercy.* &c.

And the said *B.* by *C. D.* his attorney co-
meth and defendeth the force and injury, *Cognovit ac-*
when, &c. and saith, that he cannot deny *tionem in debt.*
the action of the said *E.* nor but that he ow-
eth to the said *E.* the said 10 l. in manner and
form as the said *E.* hath above declared
against him: It is therefore considered that *Judgment*
the said *E.* recover against the said *B.* his said *signed day*
debt, and his damages by occasion of the de- *of*
taining that debt to 53 s. by the court here *1767.*
adjudged to the said *E.* by his assent; and
the said *B.* in mercy, &c.

And the said *T.* by *L. R.* his attorney co-
meth and defendeth the force and injury, *Cognovit ac-*
when, &c. and saith, that he cannot deny *tionem in debt*
but that the said writing obligatory is the deed *on a bond.*
of him the said *T.* nor but that he oweth to the
said *W.* the said 10 l. in manner and form as
the said *W.* hath above declared against him:
It is therefore considered, &c. *as before.*

And the said *L.* by *T. S.* his attorney co-
meth and defendeth the force and injury, *Judgment by*
when, &c. and the same attorney saith, that *Non sum in-*
he is not informed by the said *L.* of any an- *torinatus.*
swer to be given for the said *L.* to the said *R.*
in the plaint aforelaid; and he saith nothing
else thereupon; by which the said *R.* remain-
eth thereupon undefended against the said *L.*
It is therefore considered, &c.

And the said *C. D.* by *E. T.* his attorney *Nil dic't in*
cometh and defendeth the force and injury, *case.*
when,

*Inquiry
awarded.*

when, &c. and saith nothing in bar or preclusion of the action of the said G. by which the said G. remaineth thereupon undefended against the said C. For which the said E. ought to recover against the said C. his damages by occasion of the premisses. But because it is not known what damages the said G. hath sustained by occasion of the premisses, therefore it is commanded to the sheriff, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said G. hath sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which he shall thereupon make he make appear to the justices of our lord the king at *Westminster*, on the morrow of the holy *Trinity*, under his seal, and the seals of them by whose oath he shall make the said inquisition. As to continuance *vide* 2 *Danz. Abr.* 153. pl. 7. *Tel.* 97. *Noy* 120. *Cro. Eliz.* 144, 774. 11 *Co.* 6. b. *Rel. Rep.* 30, 31. *Cro. Eliz.* 75. *Sid.* 16.

If the action be in case *Sur assumpsit*, instead of saying [*by occasion of the premisses*] say [*by occasion of the not performing the promises and undertakings aforesaid.*]

In trespass say, [*by occasion of the trespass aforesaid.*]

If in trespass and assault, say [*by occasion of the trespass and assault aforesaid.*]

If in trespass, assault and imprisonment, say [*by occasion of the trespass, assault and imprisonment aforesaid.*]

In

In covenant say [by occasion of breaking the said covenant.]

If the defendant, after having pleaded *per minas* or *per dures*,² and issue taken thereon, is willing to confess the action, the entry of such confession is to be in this manner.

At which day here cometh as well the said *A.* as the said *B.* by their attornies aforesaid, and thereupon the said *B.* relinquishing his averment aforesaid above by him pretended faith, that he cannot deny the action of the said *A.* thereupon, nor but that he at the time of making the said writing was of his own right at large, and made the said writing to the said *A.* of his mere and free will, and not for fear of threatnings, as he the said *A.* hath above alledged: Therefore it is considered, &c. as before. Relicta verificatione.

If the defendant confess the action after *Non est factum* pleaded, and issue joined, the entry is thus:

At which day here cometh as well the said *R.* as the said *S.* by their attornies aforesaid, and hereupon the said *S.* relinquishing his averment aforesaid above by him pretended, faith, that he cannot deny the said action of the said *R.* nor but that the said writing is the deed of him the said *S.* nor but that he oweth the said *R.* the said 100*l.* in manner and form as the said *R.* above complaineth against him: Therefore it is considered, &c. The like after Non est factum plead'd.

And the said *B. C.* by *D. E.* his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said *B.* of any answer Non sum informatus in causa.

*Inquiry
awarded.*

swer for the said *B.* to be given to the said *E.* in the plaint aforesaid; for which the said *E.* ought to recover his damages by occasion of the premisses against the said *B.* But because it is unknown what damages the said *E.* hath sustained by occasion of the premisses, it is commanded to the sheriff, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what damages the said *E.* hath sustained as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which he shall thereupon take he make appear to the justices of our lord the king at *Westminster*, in five weeks from the day of *Easter*, under his seal, and the seals of, &c.

The clerk of the judgments enters up the final judgment. See his duty under the head of the officers of the court, *fol.* 17.

*No warrant
to confess a
judgment to be
taken of a pri-
soner, unless
an attorney on
his behalf be
present.*

No bailiff or sheriff's officer shall presume to exact or take from any person, being in his custody, any warrant to acknowledge a judgment but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereunto; which said warrant shall be produced when the said judgment shall be acknowledged. *Hil.* 14, 15. *Car.* 2.

No attorney shall enter or acknowledge, or cause to be entered or acknowledged, any judgment by colour of any warrant gotten from any defendant being under arrest, otherwise than is aforesaid. *Same rule.*

But

But if the defendant be an attorney, or Aliter if de-
fendant be an
attorney. practises as such, 'tis sufficient, though no attorney on his behalf be present. *Rep. and
Cas. of Praet. C. P. 94. Barnes 37.*

It is not necessary that a warrant of attorney to confess a judgment in this court given by a person in custody, be executed in the presence of an attorney of this court; if it be in the presence of an attorney of the court of Warrant to
confess a judg-
ment in the
presence of an
attorney of B.
R. is sufficient. *King's Bench* it is sufficient. *Barnes 44.*

Every warrant of attorney for confessing a judgment in this court shall be read over by the person who is to execute the same, or by some other person to him before the execution thereof; and if judgment shall be entered up upon any such warrant of attorney which shall not be so read over as aforesaid, such judgment upon any motion may be set aside as irregular. *Trin. 14, 15 Geo. 2.* Warrant of
attorney to
confess a judg-
ment to be
read by or to
the party.

If judgment on a warrant of attorney be not entered up within a year, the plaintiff must apply to the court for leave to enter up the judgment, making an affidavit of the due execution of the warrant, that the debt is unsatisfied, and the defendant living. *Rep. and
Cas. of Praet. C. P. 69. Barnes 270.* On warrant
of a year
standing judg-
ment can't be
entered with-
out leave of
the court.

If a warrant of attorney to enter judgment be above a year old, and under ten years old, leave to enter judgment may be given by a treasury rule; but if the warrant be above ten years old, the court must be moved for leave to enter judgment. If the warrant be under twenty years old, the common affidavit of due execution of the warrant, that the debt is unpaid and the parties living, is suffi- When by a
treasury rule
a judgment
may be entered
on an old war-
rant of attor-
ney.

cient for an absolute rule. But if the warrant be above twenty years old, the rule must be to shew cause, and served on defendant. *Barnes* 41, 47. *Rep. and Cas. of Pract. C. P.* 146.

Leave granted to enter judgment on an old warrant of attorney in *Mich.* term, on affidavit, that defendant was living in *Ireland*, on 18 *Sept.* preceding, as a reasonable length of time for distance. *Barnes* 53, 54.

Of a special original to support the judgment.

If the plaintiff has judgment, and it be not upon a verdict, his attorney must make out a *Præcipe* for a special original returnable on the first return of that term, in which the judgment (or interlocutory judgment in case of a writ of inquiry) is entered.

The form of a Præcipe for a special original in case.

Præcipe for a special original.

Indebitatus assumpsit for the use of horses, coach, &c. and attendance of servants.

I *L. B.* shall give you security to wit. *I* try to prosecute his suit, then put by sureties and safe pledges *C. M.* late of *Westminster* in the county of *Middlesex*, esq; that he be before our justices at *Westminster* on the morrow of *All Souls*, to shew, That whereas the said *C.* on the 25th day of *September* in the year of our Lord 1766, at *Westminster* in the said county of *Middlesex*, was indebted to the said *L.* in the sum of 200*l.* of lawful money of *Great Britain*, for the hire of divers horses, mares and geldings of him the said *L.* and for the labour and attendance of diverse of his servants, and also

for the use of diverse of his coaches and chariots by him the said C. at his special instance and request before that time used, hired and had, and being so indebted, and the said C. in consideration thereof afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, took upon himself, and to the said L. then and there faithfully promised, that he the said C. would well and truly pay the said 200 l. to him the said L. when he the said C. should be afterwards thereunto requested.

And also whereas the said C. afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the said county of *Middlesex*, in consideration that the said L. had before that time, at the like special instance and request of him the said C. let to hire to him the said C. diverse other horses, mares and geldings, and diverse other coaches and chariots of him the said L. and had also at the like special instance and request of the said C. before that time by diverse of his servants done and performed for him the said C. diverse other labours and attendances, took upon himself, and to the said L. then and there faithfully promised, that he the said C. would well and truly pay to the said L. so much money, as he the said L. had reasonably deserved to have for the same, when he the said C. should be afterwards thereunto requested. And he the said L. doth aver, that he the said L. reasonably deserved to have for the same the further sum of 200 l. of like lawful money, *to wit*, at *Westminster*

Quantum meruit ibidem.

Insimul · com-
putasset.

aforesaid in the county aforesaid, whereof the said C. afterwards, that is to say, on the same day and year aforesaid there had notice. *And also whereas* the said C. afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, had accounted with him the said L. touching and concerning diverse other sums of money by him the said C. to him the said L. then due and in arrear, and unpaid; and upon that account he the said C. was found in arrear to him the said L. in the sum of 132 l. 7 s. of like lawful money, and being so found in arrear he the said C. in consideration thereof afterwards, *to wit*, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, took upon himself, and to him the said L. then and there faithfully promised that he the said C. would well and truly pay the said 132 l. 7 s. to the said L. when he the said C. should be afterwards thereunto requested: *Nevertheless* the said C. in no wise regarding his said several promises and undertakings so made by him as aforesaid, but contriving and fraudulently intending him the said L. in this behalf craftily and subtilly to deceive and defraud, hath not paid to him the said several sums of money, or any of them or any part thereof (although to pay the same to him the said L. he the said C. afterwards, that is to say, on the same day and year aforesaid, at *Westminster* aforesaid in the county aforesaid, was requested by the said L.) but the said C. to pay the same to him hath hitherto altogether refused, and still

Breach.

still doth refuse to pay him the same, to the damage of the said *L. 200l.* as he saith,

R. R. Returnable on the morrow of All Souls.

This *Præcipe* must be carried to the curfitor of the county in which the action is laid, on or before the effoin-day of the subsequent term, pursuant to the following order.

No curfitor shall make, or permit to be made, within his respective office and division, any original writs whatsoever of any return past, unless he shall receive the instructions for making thereof within the term wherein the said writs are to be returnable, or at farthest *on or before* the effoin-day of the next succeeding term, without special warrant from the lord chancellor or lord keeper of the great seal of *England*, or master of the rolls for the time being. *Lord Clarendon's orders in chancery.*

If the debt demanded, or damages laid, exceed *40l.* the plaintiff pays a fine to the king in proportion to such debt or damages, as follows:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
From <i>40l.</i> to 100 marks ———	0	6	8
From 100 marks to <i>100l.</i> ———	0	10	0
From <i>100l.</i> to 200 marks ———	0	13	4
From <i>133l. 6s. 8d.</i> to <i>166l. 13s. 4d.</i>	0	16	8
From <i>166l. 13s. 4d.</i> to <i>200l.</i> —	1	0	0
And for every 100 marks more	0	6	8
And for every <i>100l.</i> more ———	0	10	0

*Of returning
the original.*

When the curfitor has made out the original, the plaintiff's attorney returns it of course thus ;

Pledges to prosecute { *John Doe,*
 Richard Roe.

The within named C. M. hath nothing in any bailiwick whereby he can be * attached,

The answer of

Robert Darling, Esq; } Sheriff.
James Esdail, Esq; }

And then he files it with the *Custos brevium*.

*Warrant of
attorney.*

He must also file a warrant of attorney for the plaintiff, and one for the defendant, if he appeared by attorney.

Of writs of inquiry.

*Notice of exe-
cuting writ of
inquiry.*

WHEN you have signed your interlocutory judgment, you are to give the defendant notice of executing the writ of inquiry ; and in some instances you may give notice of executing the writ of inquiry before you have signed interlocutory judgment, as in cases of demurrers and issues on *Nisi* record, as appears *fol. 228*,

*Where 8 days
notice of exe-
cuting writ of
inquiry in
London or
Middlesex.*

In *London* or *Middlesex* (the defendant dwelling within forty miles of *London*) there must be eight days notice given of executing a writ of inquiry, exclusive of the day whereon the notice is given. *Mich. 1654.*

*Where fourteen
days.*

But if the defendant lives above forty miles from *London*, and the inquiry is to be execu-

* *Vide antea fol. 125-6.* the difference between attached and summoned.

ted in London or Middlesex, there must be fourteen days notice, exclusive of the day of the notice. *Same rule.* This rule holds good although the defendant be an attorney of the court. *Barnes* 265. and notwithstanding *Stat. 14 Geo. 2. chap. 17.* See *ante* 196.

And eight days notice, exclusive of the *Eight days no-* day of the notice, must be given of execu- *tice in the* ting writs of inquiry in the country. *Same country.* *rule.*

If there have been no proceedings for *Where a* twelve months after judgment, there must be *term's notice.* a term's notice given of executing a writ inquiry of damages; and such notice must be given before the effoin-day of the term. *Vide antea fol. 197. . Rule, Pas. 13 Geo. 2.*

Where the plaintiff concludes *ad patriam*, *Where plain-* and gives notice of trial on the back of his *tiff concludes* pleading (pursuant to the rule of *Trinity 2 ad patriam,* *Geo. 1. antea fol. 197.*) if the defendant does *gives notice of* not join issue on such pleading before the rule *trial, and de-* is out, the defendant's attorney shall, after *pendant don't* judgment obtained, be obliged to accept no- *join issue, no-* tice of executing a writ of inquiry from the *tice of inquiry* time that the notice of trial was given on the *to be from the* back of such pleading, as aforesaid. *Hilary given.* *time notice of* *trial was* *6 Geo. 1.*

Vide antea fol. 227. Where defendant *Where notice* shall be obliged to accept notice of executing *of inquiry may* a writ of inquiry on the back of a joinder in *be given on* demurrer or demurrer; and *fol. 234. where* he shall be obliged to accept the like notice *demurrer or* on the back of an issue of *Nul tiel record.* *joinder in de-* *murrer.* *And on issue of*

Where the plaintiff has entered an appear- *Nul tiel re-* ance for the defendant, pursuant to the act of *cord,* parliament, lest a declaration for him in the *Where notice* *to be delivered* office,

*to defendant, or
left at his last
place of abode.*

office, given him proper notice thereof, and signed judgment for want of a plea, he may give notice of executing his writ of inquiry either by delivering the notice in writing to such defendant, or leaving the same for him at his last or most usual place of abode, which shall be a sufficient notice to such defendant. *Mich. 1 Geo. 2.*

*Notice of in-
quiry not to be
given to de-
fendant if his
attorney be
known.*

Notice of trial or of (a) executing a writ of inquiry given to a defendant, when his attorney is known, is not good notice; but when the defendant's attorney is not known, notice of trial or of executing a writ of inquiry may be given to the defendant. *Rep. and Cas. of Pract. C. P. 62. Pract. Reg. C. P. 275.*

The form of the notice.

Common Pleas.

*John Denn
against
Richard Fenn.*

S I R,

*The form of a
notice of in-
quiry.*

Be pleased to take notice, that a writ of inquiry of damages in this cause will be executed on *Monday* the fourteenth day of *May* instant, between the hours of ten and twelve in the forenoon, at the *Court-House at Westminster.*

Your humble servant,

*To Mr. N. C.
Attorney for deft.*

*L. R.
Attorney for the plt.
4th May 1778.*

Notice

Notice of executing a writ of inquiry at eleven of the clock in the forenoon is good, if the writ be executed before twelve. *Pract. Reg. C. P.* 446. *Barnes* 302. *As to the time.*

Notice of executing a writ of inquiry between the hours of eleven and two is bad, it should be confined to two hours at most, as between ten and twelve. *Rep. and Cas. of Pract. C. P.* 113. *Pract. Reg. C. P.* 445, 446. *Barnes* 296.

Notice of executing a writ of inquiry at ten in the forenoon, or so soon after as the sheriff can attend, is bad for incertainty. *Rep. and Cas. of Pract. C. P.* 99. *Pract. Reg. C. P.* 134. *Barnes* 295.

The notice should be certain as to the place, viz. the house, street, &c. *And place.* A notice of executing a writ of inquiry at the sign of the *Three Tons* in *Brook-street, Middlesex*, was held bad, not saying where that *Brook-street* was, viz. in *Holborn*, there being three *Brook-streets* in *Middlesex*. *Lemark v. Newman*, *Trin.* 10 *Geo.* 2. *Pract. Reg. C. P.* 447. *Barnes* 299, 300. *Com. Rep.* 551.

Notice of inquiry may be given in the country to the country attorney. *Notice to country attorney.* *Barnes* 305. *Vide antea* 196.

Notice for executing a writ of inquiry before a judge at the assizes ought to be for the assizes generally, and not for any particular day, and need not be entered with the marshal, it not being within the rule concerning records of *Nisi prius*, the judge being no more than an assistant to the sheriff to whom the writ was directed. *Of executing inquiry before a judge of assise.*

*Promissory
note, &c. must
be proved on
writ of in-
quiry.*

If the action be on a promissory note or bill of exchange, the letting judgment go by default is not such an admittance of the note or bill, as to render the proof of them unnecessary; on the contrary they must be proved on executing the writ of inquiry. *Barnes* 233. but *Gould* J. C. P. upon judgment by default, in an action upon a promissory note of hand, or bill of exchange, the sum due thereon, is admitted, and need not be proved upon the execution of the writ of inquiry, 3 *Wils. Rep. C. B.* 165. *H. 11 Geo. 3. A. D.* 1771. *Anon.*

*Irregularities
cured by de-
fence.*

Irregularity in the notice, &c. is cured by the defendant's making a defence on executing the writ of inquiry. *Barnes* 233, 413.

After defence made on executing a writ of inquiry, defendant cannot take advantage of mistake in declaration. 2 *Wils.* 380.

*Inquiries set
aside.*

Inquiries have been set aside for excessive damages, and where the sheriff has admitted improper evidence to lessen damages.

Inquisition taken before two under sheriffs extraordinary, set aside. 2 *Wils.* 378.

Motion to set aside inquisition may be made on the sixth day in term, after inquiry returnable, if final judgment be not before signed. 2 *Wils.* 379.

A writ of inquiry of damages,

*Writ of in-
quiry.*

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriff

The Attorney's Practice

nels * Sir William De Grey, knight, at
Westminster, the day of
in the seventh year of our reign.

Cooke.

If the action be at the suit of an attorney of the court, the writ of inquiry is in this form:

*The form
when at the
suit of an at-
torney:*

GEORGE the third, &c. To, &c.
Whereas C. V. was attached by our writ of privilege issuing out of our court here, to be before our justices at Westminster, to answer S. O. gentleman, one of the attorneys of our court of the bench, according to the liberties and privileges of the same court, for such attainies and other ministers of the same bench, time out of mind used and approved in the same; for that, *to wit*, That whereas the said S. on the day of, &c.
(*setting forth the declaration to*) to the damage of the said C. of twenty pounds, as is said; and it was in such manner proceeded in our said court, That, &c. (*as before, making the writ returnable on a day certain, as on Monday next after fifteen days of Easter, and not on a general return day.*)

* A writ of inquiry in this court was tested Philip lord Hardwick, instead of Sir John Willes; on writ of error brought, it was held this was no good cause of error, and judgment was affirmed. *Andr.* 74. 2 Str. 1080. Whether writ be not sufficient without adding day or year, after the name of the chief justice, in the test. See Barnes 425, 426.

If an attorney be defendant, the form is thus: *When against an attorney.*

GEORGE the third, &c. To, &c. Whereas *D. W.* by *W. T.* his attorney, came into our court before our justices at *Westminster*, and exhibited to our said justices his bill against *T. P.* gentleman, one of the attornies of our court of the bench, present in our said court, in his proper person, for that, &c. (*as before*) and the writ to be returnable on a day certain.

Writs of inquiry are to be signed by the prothonotary before they are sealed.

If your witnesses will not voluntarily attend, you may have a *Subpœna* for them in this form:

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To *A. B. C. D. E. F.* and *G. H.* greeting. We command you, and each of you, firmly injoining, that all other matters laid aside, and notwithstanding any excuse, you be in your proper persons before the sheriff of *Middlesex*, at the *Court-House* at *Westminster*, on the _____ day of _____ at eleven of the clock in the forenoon of the same day, to testify the truth in a certain matter of controvery depending in our court before our justices of the bench, between *K. J.* plaintiff, and *S. H.* defendant, in a plea of trespass on the case; and this you are not to omit under the penalty of one hundred pounds. Witness Sir *William De Grey*, knight, at *Westminster*, *Subpœna ad testif. on a writ of inquiry.*

The Attorney's Practice

Westminster, the twelfth day of *May* in the seventh year of our reign.

Cooke.

When the writ is signed and sealed, you make out tickets for the witnesses to the following effect, *viz.*

Mr. ———

By virtue of a writ of *Subpoena* to you directed, and herewith shewn unto you, you are personally to be and appear before ——— our sheriff of the county of ——— or his under sheriff on ——— the ——— day of ——— at ten o'clock in the forenoon of the same day, at the house of ——— the sign of the *King's Arms*, in ——— in the said county, then and there to testify the truth, according to your knowledge, upon a writ of inquiry of damages, to be then and there executed in a certain cause now depending between ——— plaintiff and ——— defendant, in a plea of ——— on the part of the plaintiff. And this you are not to omit upon pain of 100*l.* Dated the ——— day of ——— in the eighteenth year of the reign of our sovereign Lord *George* the third, by the grace of God of *Great Britain, France, and Ireland*, king, defender of the faith, and so-forth, and in the year of our Lord 1778.

By the court.

When the writ of inquiry is returned by the sheriff, you get the inquisition stamped with a double half-crown stamp, and then carry.

carry it to the prothonotary to tax your costs, and after that you deliver it to the clerk of the judgments to enter up final judgment on the roll.

Where final judgments shall be signed on *On signing* inquisitions upon writs of inquiry, the inquiry *judgment, the* shall be immediately left with the clerk *inquisition to,* of the judgments of the respective prothonotary, and shall not afterwards be taken out *be left with* of the office without leave of the court. *the clerk of the* *judgments.* *Trin.*

29 Car. 2. *Trin.* 13 Geo. 2.

Where notice is given of a writ of inquiry, *If inquiry not* and not countermanded in time, the defendant shall be intitled to costs from the plaintiff, for not executing such writ of inquiry, *executed ac-* in the same manner as a defendant, by the *cording to no-* course of the court, is now intitled to costs *tice, deft. to* from a plaintiff who does not proceed to trial *have costs.* of an issue joined after notice given. *Trin.* 13 Geo. 2.

Of bringing in rolls and docketing the rolls.

EVERY attorney that shall receive any *Attorney on re-* roll, either plea or common, from the *ceiving roll* respective prothonotaries of this court, shall *from prothono-* sign and set his name to such prothonotary's *tary's office to* book, from whom he shall receive the same; *sign the book.* and no prothonotary shall deliver any roll but to the proper hand of some known attorney or clerk of their respective offices. *Pas.* 34 Car. 2.

Rolls not to be carried into the country. No attorney shall carry any rolls of this court into the country. *Pasf. 12 Jac. 1. Mich. 1649. Mich. 1654. Pasf. 34 Car. 2.*

When attornies are to bring their rolls. Easter term. Every attorney of this court, that shall receive any roll or rolls as aforesaid, plea or common, of any *Easter* term, shall bring the same into the office from whence he received it on or before the first day of the next *Trinity term*.

Trinity. And the rolls received of any *Trinity* term shall be brought into such office on or before the feast-day of *St. Michael* the archangel next ensuing the said term.

Michaelmas. And the rolls received of any *Michaelmas* term shall be brought into such office on or before the sixth day of *January* next ensuing.

Hilary. And the rolls received of any *Hilary* term shall be brought into such office by the space of four days before the feast of *Easter* next after the said term. *Pasch. 34 Car. 2.*

Carot paper. The prothonotaries, on delivering the common rolls to the clerk of the warrants, are also to deliver a note of the rolls that are wanting; the same note to be subscribed by the clerk of the warrants, and redelivered to the prothonotary; and the clerk of the warrants, on delivering over the common rolls to the clerk of the effoins, is to take the like note from the clerk of the effoins of the rolls wanting. *Mich. 1654.*

No post rolls to be delivered to attornies. The clerk of the effoins shall not deliver out any post rolls, or other rolls of this court, to any attorney or clerk of this court, but to the respective prothonotaries and other officers

cers of this court, that have a right to such rolls. *Pesb. 34 Car. 2.*

The several and respective officers of this court shall deliver in all their rolls of *Trinity, Michaelmas, and Hilary* term, to the clerk of the effoins, before the effoin-day of the several terms following; and their rolls of *Easter* term upon or before the first day of *Trinity* term following; and the officer, who shall not bring or send in all his rolls of the said several terms at the times aforesaid, shall pay to the clerk of the effoins, for every roll brought in after 12 d. 6 fac. 1. *Pas. 5 W. & M.*

When the officers are to carry in the rolls to the clerk of the effoins.

The plea rolls of every term shall be brought in to the clerk of the effoins three weeks after the end of the term following, and, in default thereof, there shall be likewise paid to the clerk of the effoins, for every plea roll brought in after, 12 d. *Pas. 5 W. & M.*

The clerk of the effoins shall a fortnight within every term lay before the court an account of what rolls are wanting, that ought to have been brought in according to the said rules, together with the attornies names who took them out of the said offices, that this court may proceed as they shall think fit against such persons as shall not have brought in their rolls according to the said rules. *Trin. 2 Geo. 1.*

The clerk of the effoins to lay before the court an account of what rolls are wanting.

On carrying in your rolls to the prothonotary you are to docket them on the common docket, in the manner as you'll see others, thus:

Of docketing judgments.

Not informed in debt.

*Middlesex. West for Burton**Parker for Taylor,*

} Roll 225

Says nothing in Case.

M.

Same for same,

Same for same,

} Same.

Forejudger.

*M.*Same for *Wfce*,

against,

Wiljms ... attorney,

} 342.

Execution by default.

M.

Same for same,

against

Vanbrugh. administ.

} Same.

The prothonotary delivers the rolls over to the clerk of the warrants, who is to inspect the same, and estreat all fines and amer-ciements against sheriffs and others that he shall find amongst the said rolls, and then to deliver them to the clerk of the essoins, who docketts them, pursuant to the statute of 4 & 5 of *W. & M. c.* 20. then binds them up, and carries them over to the treasury at *Westminster*.

*Of executions.**Ca. fa.*

1. **A** *Capias ad satisfaciendum* is a writ which issues after a judgment; and by this writ the sheriff is commanded to take
the

the body of the defendant, and have him in court at the return of the writ to satisfy the plaintiff.

This writ was by the common law only in trespasses, *Quare vi armis*, being direct and wilful wrongs; but now by the statute 25 *Ed.* 3. may issue in other cases. It is deemed a full execution, and in the law sufficient for the whole debt; *corpus humanum non recipit estimationem*; and where the body is taken on a *Capias ad satisfaciendum*, no other execution can be had against the defendant's lands or goods. But in case the defendant dies in execution, by the statute 21 *Jac.* 1. c. 24. the plaintiff, his executors or administrators, may lawfully sue forth execution against the lands and tenements, goods and chattels of the defendant so dying in execution, in like manner as if the deceased defendant had never been taken in execution: In this case the judgment must be revived by *Scire facias*.

If def. dies in execution, p't. may have execution against the lands or goods.

If two be bound jointly and severally to me, and I sue them jointly, I may have a *Capias* against them both, and the death or escape of one, shall not discharge the other; but I cannot have a *Capias* against the one, and another kind of execution against the other, because though they be two several persons, yet they make but one debtor, when I sue them jointly; but if I sue them severally, I may sever them in their kinds of execution; though if once any satisfaction be had of one, or against the sheriff for an escape

of one, the rest may be relieved upon an *Audita querela*. Hob. 59.

Fi. fa.

2. A *Fieri facias* is a writ which commands the sheriff to levy the debt or damage, and costs recovered by a judgment of the goods of the defendant, and to have the same in court at the return of the writ to satisfy the plaintiff.

Where executed after defendant's death.

3 Danv. 319.
pl. 8.

If only part levied, *Ca. fa.* or *Elegit* for residue.

If after this writ is sued out, and before it is executed, the defendant dies, it may be executed on his goods in the hands of his executors or administrator.

If only part of the debt or damages be levied, the plaintiff may have a *Ca. fa.* or *Elegit* for the residue. Hob. 57, 58.

After *Fi. fa.* executed, and thereby part of the debt and costs levied; plaintiff before return irregularly sued out a *Test. Fi. Fa.* and under it levied the residue. Court of C. P. set aside the *Test.* and ordered restitution and costs. Barnes 213.

Where *Fi. fa.* not returned, continuances entered on the roll, not sufficient, to support *Ca. fa.* on old warrant of attorney, not revived, and *Ca. fa.* set aside with costs, and *Superfedeas* awarded to discharge defendant.

Defendant arrested by *Ca. fa.* pays the money to the sheriff's officer; at the return, sheriff returns that *Fi. fa.* against the goods of the plaintiff in *Ca. fa.* at suit of defendant therein was delivered to him, and that he levied the money in *Fi. fa.* out of the cash received on *Ca. fa.* return held insufficient, and sheriff ordered to pay money levied

levied under *Ca. fa.* to plaintiff therein, deducting poundage. *Barnes* 214.

3. *Elegit*; this writ is given by the statute *Elegit.* of *W. 2.* 13 *Ed. 1. c.* 18. And by this writ the sheriff is to deliver to the plaintiff all the chattels of the defendant, except his oxen and the beast of his plow, and one half of his land, to hold until the debt or damages, and costs recovered, be satisfied, upon a reasonable price or extent.

If on an *Elegit* only goods be levied, and *If only part* these not sufficient to satisfy the judgment, *levied. Ca. fa.* the plaintiff may have a *Capias* for the residue, it being in effect but a *Fieri facias*. *Hob.* 58.

If I take out a *Ca. fa.* or *Fi. fa.* and they take no effect, I may have one of them after another, or an *Elegit* after both, if they fail. *Hob.* 57.

If the judgment be on a bond with a penalty, the plaintiff may, as far as the penalty will extend, levy the poundage payable to the sheriff, and all incident charges of the execution. *Barnes.* 198.

If execution be not sued out within a year, Execution to the judgment must be revived by *Scire facias*. *be sued out* *Barnes* 197. 206. but see 210. *within the*

But on a rule to shew cause, why a *Fieri facias* should not be set aside, the judgment *year, or else a* *Sci. fa.* being above a year old, and not revived by *Where helped* *by continuances* *Scire facias*, nor any continuances of a *Fieri* *on the rolls,* *facias* entered on record; the plaintiff having, *&c.* before cause shewn, entered the continuances, and producing intervening writs of *Fieri facias*

rias to warrant the same, the rule was discharged.

*Of Testatum
Executions.*

In case of a *Testatum fieri facias* or *Ca. sa.* the court will not go into a nice inquiry into the *Fieri facias*, or *Ca. sa.* into the Original county to warrant the *Testatum*, was made out; it is sufficient if the first *Fieri facias*, or *Ca. sa.* returned be produced. *Parnes 211.*

*Of execution
pending until on
the judgment.*

If the plaintiff hath brought an action of debt on the judgment, he cannot take out an execution of that judgment until he hath discontinued the action of debt. *Barnes* 208.

After execution executed the court cannot inquire into the Quantum of debt and costs.

It hath been held, that after execution executed, though the judgment be for a penalty, the court cannot refer to the prothonotary to inquire what is due for principal, interest, and costs; and what is levied in order to make restitution of the surplus, without consent of the plaintiff; but the defendant must apply for relief to a court of equity. *Barnes* 204.

Capias ad satisfaciendum *in deb't.*

Ca. fa. ind. bt.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriffs of *London*, greeting. We command you,

Signing Seal Duty

4 that ye take *W. B. late of London, cabinet-*
 7 maker, otherwise called *W. B. late of the pri-*
 8 rish of _____ in the county of *Middlesex,*
 11 cabinet-maker, if he be found in your baili-
 wic, and keep him safely, so that you may
 have

have his body before our justices at *Westminster* on the morrow of the holy *Trinity*, to satisfy *R. R.* as well of a certain debt of fifty pounds, which the said *R.* in our court before our justices at *Westminster* recovered against him, as of sixty-three shillings, which in our said court were adjudged to the said *R.* for his damages, which he had by occasion of the detaining that debt, whereof the said *W.* is convicted; and have there this writ. Witnesses Sir *William De Grey*, knight, at *Westminster*, the day of in the seventh year of our reign.

To satisfy *R. R.* of fifty pounds, which were adjudged to the said *R.* in our said court, before our justices at *Westminster*, for his damages which he sustained by occasion of a certain trespass on the case done to the said *R.* by the said *W.* at *S.* in your county, whereof he is convicted; and have you there this writ. Witnesses, &c.

For his damages which he had by occasion of the not performing certain promises and undertakings made to the said *R.* by the said *W.* at *W.* in your county; whereof, &c.

For his damages which he had by occasion of the not performing a covenant made between the said *W.* and the said *R.* according to the force, form and effect of certain indentures [or articles] made between them; whereof, &c.

For his damages which he sustained by occasion of a certain trespass and assault, made by the said *R.* by the said *W.* with force and

arms, and against our peace, at *W.* in your county; whereof, &c.

Trespafs.

For his damages which he sustained by occasion of a certain trespass done to the said *R.* by the said *W.* with force and arms, and against our peace, at *L.* in your county; whereof, &c.

*In judgement
for damages.*

For his damages which he sustained by occasion of a certain trespass and detinent of a farm done to the said *R.* by the said *W.* with force and arms, and against our peace, at *L.* in your county; whereof, &c.

Replevin.

For his damages which he had by occasion of the taking and unjustly detaining the cattle of the said *R.* at *W.* in a certain place called the *H.* in your county; whereof, &c.

Words.

For his damages which he had by occasion of the speaking and publishing certain false and scandalous words by the said *W.* of the said *R.* at *B.* in your county, whereof, &c.

*Testatum Ca.
sa.*

Signifying

If you make out a *Testatum Ca. sa.* you are to write as before, to [whereof he is convicted *s. d. inclusive*] and after those words you are to proceed thus; and whereupon our Sheriff of *N.* [the Sheriff to whom the first *Ca. sa.* was directed] lent to our justices at *Westminster* at a certain day now past, that the said *W.* was not found in his bailiwick, whereas it is testified in our said court, that he lurketh and secreteth himself in your county; and have there, &c.

*Ca. sa. est r
& Sci. sa.*

It it be after a *Sci. sa.* then after the words [whereof he is convicted] say, and whereupon it is considered in our said court, that the aforesaid *R.* have his execution against the

the aforeſaid *W.* of the debt and damages aforeſaid, by the default of the ſaid *W.* and have there, &c.

20 *GEORGE* the third, by the grace of *A Teſtatum*
 God, of *Great Britain, France, and Ireland*, *Ca. ſa. after*
 king, defender of the faith, &c. To the *a Sci. ſa. by*
 ſheriff of *S.* greeting. We command you, *an adminiſt.*
 that you take *V. C.* late of, &c. if he be *durante mino-*
 found in your bailiwick, and keep him ſafely, *ritate execu-*
 ſo that you may have his body before our ju- *toris of an*
 ſtices at *Weſtminſter* on the octave of the holy *executor.*
Trinity to ſatisfy *J. F.* adminiſtrator of the
 goods and chattels which were of *B. F.* du-
 ring the minority of *W. F.* executor of the
 teſtament and laſt will of the ſaid *B.* late ex-
 ecutor of the teſtament and laſt will of *W. B.*
 deceased, as well of a certain debt of ſixty
 pounds, which the aforeſaid *B.* lately in our
 court before our juſtices at *Weſtminſter* reco-
 vered againſt the ſaid *V.* as of fifteen pounds,
 which in our ſaid court were adjudged to the
 ſaid *B.* for his damages which he had by oc-
 caſion of the detaining that debt whereof the
 ſaid *V.* is convicted; and whereupon it is
 conſidered in our ſaid court, that the afore-
 ſaid *J.* have his execution againſt the ſaid *V.* *Sci. ſa.*
 of the debt and damages aforeſaid, by the
 default of the ſaid *V.* And whereupon our
 ſheriffs of our city of *Exeter* have returned to
 our juſtices at *Weſtminſter* at a certain day now *Teſtatum.*
 paſt, that the aforeſaid *V.* is not found in
 their bailiwick, whereas it is teſtified in our
 ſaid court, that the ſaid *V.* lurketh and ſe-
 creteth

creteth himself in your county; and have there this writ. Witness, &c.

Testatum Ca. *GEORGE* the third, by the grace of
fa. for the God, of Great Britain, France, and Ireland,
residue after a king, defender of the faith, &c. To the
Fi. fa. in debt. Sheriff of *Lincoln*, greeting.

We command you, that you take *W. G.* late of *S.* in the county of *Leicester*, gentleman, otherwise called *W. G.* of *S.* in the county of *Leicester*, gentlemen, if he shall be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* in fifteen days from the day of Saint *Martin*, to satisfy *W. R.* gentleman, of eighteen pounds nine shillings and one penny, parcel of a certain debt and damages, to wit, of a certain debt of forty pounds, which the said *W. R.* in our court before our justices at *Westminster* recovered against him; and of forty shillings which in your said court were adjudged to the said *W. R.* for his damages which he had by occasion of the detaining that debt whereof the said *W. G.* is convicted, of which said debt and damages twenty-three pounds ten shillings and eleven pence, other parcel, by virtue of our writ thereupon were lately made and levied of the goods and chattles of the said *W. G.* And whereupon our Sheriff of *N.* sent to our justices at *Westminster* at a certain day now past, that the said *W. G.* is not found in his bailiwick, whereas it is testified in our said court, that the said *W. G.* lieth hid, wandereth and sculketh in your

Testatum.

your county; and have there this writ.

Witness, &c.

GEORGE the third, &c. To, &c. Ca. sa. against
steering! We command you, that you take ^{two where}
W. A. late of, &c. and *W. S.* late of, &c. if ^{several da-}
they be found in your bailiwick, so that you ^{mages by in-}
may have ^{quity in tres-} ~~their~~ bodies before our justices at ^{pasi and af-}
Westminster ^{to wit, fault.}

to the said *W. A.* to satisfy *R. B.* of twenty
pounds, and the said *W. S.* to satisfy the said
R. B. of forty pounds, for his several damages
which the said *R.* sustained by occasion of a
certain assault, beating, wounding and ill
treatment made on the said *R.* by the said *W.*
and *W.* and against our peace with force and
arms, at *B.* in your county, as is found by
a certain inquisition of the country of your
county taken between them; and also the
said *W.* and *W.* to satisfy the said *R.* of se-
venteen pounds which were adjudged to the
said *R.* in our said court, for his costs and
charges which he sustained by occasion of the
premises; whereof they are convicted; and
have there, &c.

To satisfy *C. D.* late of, &c. esq; of nine ^{Upon a nonsuit}
pounds and ten shillings, which in our court ^{in debt.}
before our justices at *Westminster*, by the dis-
cretion of the said justices, according to the
form of the statute in that case made and pro-
vided, were adjudged to the said *C.* for his
costs and charges which he sustained, for that
the said *E. T.* did not prosecute his writ by
the said *E.* obtained in our said court
against the said *C.* in a certain plea of debt
upon

upon demand for forty pounds, whereof the said *E.* is convicted; and there, &c.

If in case, say, — in a certain plea of trespass on the case.

In trespass, — in a certain plea of trespass.

In ejectment, — in a certain plea of trespass and ejectment of farm; *et ceteris de ceteris.*

*A Testatum
Ca. sa. of pri-
vilege for an
attorney
against an at-
torney, in
debt.*

GEORGE the third, b^y the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *L.* greetings. *As* *L. R.* gentleman, one of the attorneys of our court of the bench, otherwise called *L. R.* of, &c. so that you may have him before our justices at *Westminster* on *Wednesday* next after the morrow of *All Souls*, to satisfy *J. S.* gentleman, another attorney of our court of the bench, as well of a certain debt of sixty pounds, which the said *J.* in our court before our justices at *Westminster* recovered against him, as of fourteen pounds and ten shillings which were adjudged to the said *J.* in our said court, for his damages which he had by occasion of the detaining that debt, whereof the said *L.* is convicted; and whereupon our sheriff of *M.* sent to our justices at *Westminster* at a certain day now past, that the said *L.* was not found in his bailwic, whereas it was testified in our said court, that he lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

Testatum.

GEORGE

GEORGE the third, by the grace of *A Testatum*
 God, of *Great Britain, France, and Ireland*, *Ca. fa. by a*
 king, defender of the faith, &c. To the she-
 riffs of *N.* greeting. Attach *W. T.* gentle-
 man, one of the attornies of our court of the *sur-viving*
 bench, otherwis, called *W. T.* of, &c. so that *plaintiff*
 you may have him before our justices at *West-*
minster on, *to* next after *against an at-*
torney, in

to satisfy *V. D.* as well of
 a certain debt of five hundred pounds, which
 the said *V. D.* and one *T. J.* now deceased, in
 our court before our justices at *Westminster* re-
 covered against him, as of nine pounds which
 in our said court were adjudged to the said
V. and *T.* for their damages which they had
 by occasion of the detaining that debt, where-
 of the said *W.* is convicted; and whereupon
 it is considered in our said court, that he the *Sci. fa.*
 said *V.* have execution against the said *W.* of
 the debt and damages aforesaid, by the de-
 fault of the said *W.* And whereupon our she- *Testatum.*
 riffs of *London* sent to our justices at *Westmin-*
ster on a certain day now past, that the said
W. was not found in their bailiwick, whereas
 it is testified in our said court, that the said
W. lurketh and secreteth himself in your
 county; and have there this writ. Witness,
 &c.

GEORGE the third, by the grace of *Testatum Ga.*
 God of *Great Britain, France, and Ireland*, *fa. against*
 king, defender of the faith, &c. To the she- *bail after*
 riffs of *Surry*, greeting. Whereas we lately *Nulla Bona*
 commanded our sheriff of *Middlesex*, that he *returned on a*
 should cause to be made of the lands and *Fi. fa'.*
 chattels *Recital of Fi.*
fa.

chattels in his bailiwick of *T. S.* late of, &c., thirty-eight pounds; and of the lands and chattels in his bailiwick of *F. F.* late of, &c. other thirty-eight pounds; and of the lands and chattels in his bailiwick of *T. P.* late of, &c. other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. F.* and *T. P.* heretofore, *to wit*, in the term of the Holy Trinity in the year of our reign, before Sir *Robert Eyre*, knight, and his companions, then our justices of the bench at *Westminster*, severally acknowledged themselves to owe to *E. P.* and *W. F.* to be made of their lands and chattels, and to the use and behoof of the said *E. P.* and *W. F.* to be levied; which said recognizance in that same term at *Westminster* aforesaid is inrolled, as by the said record and proceedings thereon in our same court before our said justices at *Westminster* aforesaid remaining manifestly appears; and that he should have that money before our said justices at *Westminster* from the day of *Easter* in fifteen days last past, to render to the said *E.* and *W.* for the several sums of money aforesaid, according to the form of the said recognizance whereof they are convicted; and whereupon it is considered in our said court, that the said *E.* and *W.* should have their execution against the aforesaid *T. S. F.* and *T. P.* of the said several sums of thirty-eight pounds by them in form aforesaid acknowledged, by the default of them the said *T. S. F.* and *T. P.* And whereupon our sheriff of *Middlesex* at that day sent to our said justices at *Westminster*,

Return.

minister, that the said *T. S. F.* and *T. P.* had not, nor had any one of them any lands or chattels in his bailiwick, whereof he was able to make the said several sums of 38*l.* 38*l.* and 38*l.* or any part thereof: We therefore command you, that you take the said *T. S. F.* and *T. P.* if they may be found in your bailiwick, and keep them safely, so that you may have their bodies before our justices at *Westminster* on the morrow of the Holy *Trinity*, to satisfy the aforesaid *E.* and *W.* of the said several sums of thirty-eight pounds, according to the form of the said recognizance, whereof they are convicted; and whereupon our said Sheriff of *Middlesex* sent to our said justices at *Westminster* from the day of *Easter* in five weeks last past, that the aforesaid *T. S. F.* and *T. P.* were not, nor was any one of them found in his bailiwick, whereas it is testified in our said court, that they lurk and secrete themselves in your county; and have there, &c.

Testatum.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the Sheriff of *D.* greeting. Whereas we lately by our writ commanded our Sheriff of *M.* that of the goods and chattels in his bailiwick, which were of *S. V.* late of, &c. at the time of his death, in the hands of *V. C.* gentleman, late of, &c. executor of the testament and last will of the said *S.* he should cause to be made as well a certain debt of five hundred pounds, which *W. W.* in our court before our justices

Testatum Ca.
sa. against an
executor after
a Devastavit
and Nul a Bo-
na returned.

at

at *Westminster* recovered against the said *V. C.* as also eighteen pounds which in our said court were adjudged to the said *W.* for his damages which he had by occasion of the detaining that debt, if the said *V.* had so much in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *V.* and should have that money before our justices at *Westminster* on the morrow of the Purification of the blessed *Mary* last past, to render to the said *W.* for his debt and damages aforesaid, whereof he is convicted; and our said sheriff of *M.* at that day sent to our said justices at *Westminster*, that the said *V. C.* had before the coming of the said writ sold and wasted diverse goods and chattels which were of the said *S. V.* at the time of his death, to the value of the debt and damages aforesaid, and had converted the money arising therefrom to his own proper use, so that he could not levy, or cause to be made the said debt and damages of the goods and chattels of the said *S. V.* And the said *V. C.* had no goods or chattels of his own proper goods and chattels in his bailiwick, whereof he could cause to be made the said damages, or any part thereof, as by that writ he was commanded; therefore we command you, that you take the said *V. C.* if he may be found in your bailiwick, and keep him safely, so that you may have his body before our justices at *Westminster* on the morrow of the Ascension of our Lord, to satisfy the said *W.* of the debt and damages aforesaid; and whereupon our
sheriff

sheriff of *M.* from the day of *Easter* in fif. Testam. teen days last past sent to our justices at *Westminster*, that the said *V. C.* was not found in his bailiwick, whereas it is testified in our said court, that the said *V. C.* lurketh and secreteth himself in your county; and have there this writ. Witness, &c.

GEORGE the third, &c. to the sheriff *Ca. la. for* of *K.* greeting. Whereas we lately by our writ commanded you, that of the goods and chattels in your bailiwick, which were of *M.* ^{damages} *R.* deceased, at the time of his death, being ^{against an ex-} *propria re-* ^{ecutrix after} in the hands of *M. R.* late of *N.* in your county, widow, executrix of the testament and last will of the said *N.* to be administer'd, you shall cause to be made thirty-four pounds, which in our court, before our justices at *Westminster*, were adjudged to *R. B.* for his damages which he sustained by occasion of the not performing certain promises and undertakings made to the said *R.* by the said *N.* in his life-time at *M.* in your county, if the said *M.* had so much thereof in her hands to be administered; and if she had not, then fourteen pounds and ten shillings of the damages aforesaid to be levied of the proper goods and chattels of the said *M.* and should have that money before our justices at *Westminster* from the day of the Holy Trinity in three weeks last past, to render to the said *R.* for his damages aforesaid, whereof she is convicted; and you at that day sent to our said justices at *Westminster*, that the said *M.* had no goods nor chattels in your bailiwick which

were of the said *N.* at the time of his death, whereof you could cause to be made the said damages, or any penny thereof, nor any of her own proper goods or chattels in your said bailiwick, whereof you could cause to be made the said fourteen pounds and ten shillings of damages aforesaid, or any penny thereof; we therefore command you, that you take the said *M.* if she may be found in your bailiwick, and keep her safely, so that you may have her body before our justices at *Westminster* from the day of _____ to satisfy the said *R.* of the said fourteen pounds and ten shillings of damages aforesaid; and have there this writ. Witness, &c.

*Ca. fa. in case
at the suit of
an executrix.*

GEORGE the third, &c. To the sheriffs of *London*, greeting We command you, that you take *M. G.* late of *L.* widow, if she shall be found in your bailiwick, and her safely keep, so that you may have her body before our justices at *Westminster*

to satisfy *E. K.* executrix of the testament and last will of *G. K.* her late husband deceased, of one hundred and seventeen pounds and ten shillings, which to the said *E.* in our court before our justices at *Westminster*, were adjudged for the damages of the said *G.* which he sustained by reason of not performing certain promises and undertakings made by the said *M.* to the said *G.* in his life-time at *L.* aforesaid in the parish of *St. Mary Le Bow* in the ward of *Cheap*, whereof the said *M.* is convicted; and whereupon it was considered in our same court, that the damages

*Sci. fa. on
Stat. 8 & 9
W. 3. c.*

damages aforesaid by him the said *G.* sustained by occasion of not performing the promises and undertakings aforesaid, should be assessed and adjudged to the said *E.* according to the form of the statute in that case made and provided, by default. Witness, &c.

GEORGE the third, by the grace of *A Fieri facias* God, of *Great Britain, France, and Ireland,* *in del.* king, defender of the faith, &c. To the sheriff of *Lincoln*, greeting. We command you, that you cause to be made of the goods and chattels in your bailiwick of *B. C.* late of, &c. as well a certain debt of 20*l.* which *D. E.* in our court, before our justices at *Westminster* recovered against him, as sixty shillings which were adjudged to the said *D.* in our said court, for his damages which he had by occasion of the detaining that debt; and have that money before our justices at *Westminster* on the morrow of the Ascension of our Lord, to render to the said *D.* for his debt and damages aforesaid, whereof the said *B.* is convicted; and have there this writ. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the day of, &c.

For varying the *Fieri facias* according to the nature of the action, the directions before given, *fol.* &c. for making out the *Cap:* is *ad satisfaciendum*, will serve.

In a *Testatum fieri facias*, after the words *Testatum Fi.* [*whereof he is convicted*] say, and whereupon *fa.* our sheriff of *N.* sent to our justices at a cer-

tain day now past, that the said *B.* hath no goods or chattels in his bailiwick, whereof he could cause to be made or levied the said debt and damages, or any part thereof: Whereas it is testified in our said court, that the said *B.* hath sufficient goods and chattels in your county whereof the said debt and damages may be caused to be made and levied; and have there this writ. Witness, &c.

*Fi. fa. against
an administratrix.*

GEORGE the third, &c. To, &c. greeting. We command you, that of the goods and chattels in your bailiwick, which were of *S. H.* deceased, at the time of his death, in the hands of *E. H.* late of, &c. widow, administratrix of the goods and chattels which were of the said *S. H.* to be administered, you cause to be made as well a certain debt of thirty pounds, which *R. F.* gentleman, in our court, before our justices at *Westminster* recovered against her, as ten pounds which in our said court were adjudged to the said *R.* for his damages which he had by occasion of the detaining that debt, if the said *E.* hath so much goods and chattels which were of the aforesaid *S.* at the time of his death in her hands to be administered; and if she hath not, then the damages aforesaid to be levied of the proper goods and chattels of the said *E.* And have that money before our justices at *Westminster* on the morrow of the Holy Trinity, to render to the said *R.* for the debt and damages aforesaid whereof she is convicted; and have there this writ. Witness, &c.

GEORGE

GEORGE the third, &c. To, &c. greet-
 ing. We command you, that of the goods
 and chattels in your bailiwick of J. M. late of,
 &c. and E. his wife, lately called, &c. you
 cause to be made twenty and five pounds and
 ten shillings which in our court, before our
 justices at *Westminster*, were adjudged to J. J.
 and R. R. for their damages which they sus-
 tained by occasion of the not performing cer-
 tain promises and undertakings to the said J.
 and R. by the said E. when she was sole,
 made at B. in the county of S. And have
 that money before our justices at *Westminster*
 from the day of the Holy Trinity in three
 weeks, to render to the said J. and R. for
 their damages aforesaid, whereof the said E.
 is convicted; and whereupon it is considered
 in our said court, that the said J. and R. have
 their execution against the said J. M. and E.
 of the damages aforesaid, by the default of
 the said J. M. and E. And whereupon our
 sheriff of S. at a certain day now past, sent
 to our justices at *Westminster*, that the said
 J. M. and E. had no goods or chattels in his
 bailiwick, whereof the said damages could
 be made, whereas it is testified in our said
 court, that the said J. M. and E. have suffi-
 cient goods and chattels in your county,
 whereof the said damages may be made; and
 have there this writ. Witnels, &c.

GEORGE the third, &c. To, &c. We
 command you, that of the goods and chattels
 of W. C. late of, &c. otherwise called, &c.
 in your bailiwick, you cause to be made as
 well

Testatum E.
 fa. after Sci.
 fa. in case on
 assumpsit upon
 a recovery
 against the
 wife while
 sole.

Testatum.

Fi. fa. on a
 judgment by a
 feme execu-
 trix while
 sole, where-
 upon execution

is awarded on a Sci. fa. at the suit of the husband and wife.

well a certain debt of one hundred and sixty pounds, which *E. W.* widow, executrix of the testament and last will of *S. W.* deceased, in our court, before our justices at *Westminster* recovered against him, as sixty shillings, which to the said *E.* in our said court were adjudged for her damages, which she had by occasion of the detaining that debt; and have that money before our justices at *Westminster* on the octave of the Purification of the blessed Virgin *Mary*, to render to *R. W.* whom the said *E.* married after the said judgment was given, and to the said *E.* for the debt and damages aforesaid, whereof the said *W.* is convicted; and whereupon in our said court before our justices at *Westminster* it is considered that the said *R.* and *E.* have execution against the said *W.* of the debt and damages aforesaid, by the default of the said *W.* And have there this writ. Witness, &c.

Sci. fa.

A Fieri facias against bail after Sci. fa.

GEORGE the third, by the grace of God, of *Great Britain; France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting. We command you, that you cause to be made of the lands and chattels in your bailiwick of *T. S.* late, &c. gentleman, thirty-eight pounds; and of the lands and chattels in your bailiwick of *F. F.* late, &c. smith, other thirty-eight pounds; and of the lands and chattels in your bailiwick of *T. P.* late of, &c. other thirty-eight pounds. Which said several sums of thirty-eight pounds each of them the said *T. S. E.* and *T. P.* heretofore, to wit, in the term of the

the Holy Trinity in the . year
of our reign, before Sir *Robert Eyre*, knight,
and his companions, then our justices of the
bench at *Westminster*, severally acknowledged
themselves to owe to *E. P.* and *W. F.* to be
made of their lands and chattels, and to the
use and behoof of the said *E. P.* and *W. F.*
to be levied; which said recognizance in that
same term at *Westminster* aforesaid is inrolled,
as by the said record and proceedings there-
on in our said court before our justices aforesaid
remaining manifestly appeareth; and
have that money before our said justices at
Westminster from the said day of *Easter* in fif-
teen days, to render to the said *E.* and *W.*
for the debt aforesaid, according to the form
of the said recognizance, whereof they are
convicted; and whereupon it is considered in *Sci. fa.*
our said court, that the said *E.* and *W.* have
execution against the aforesaid *T. S. F.* and
T. P. of the said several sums of thirty-eight
pounds by them in form aforesaid acknow-
ledged, by the default of them the said *T. S.*
F. and *T. P.* And have there this writ. Wit-
ness, &c.

And hereupon the said [*plaintiff*] prayeth *Award of Fla.*
the writ of our lord the king to be directed *fa. and contra*
to the sheriff of the county aforesaid, to le- *nuances.*
vy the said hundred pounds of the goods
and chattels of the said [*defendant*] for the da-
mages aforesaid. And it is granted to him
returnable here [*the return*] at which day
comes here the said [*plaintiff*] by his attor-
ney aforesaid. And the sheriff hath not sent
the said writ; therefore let another writ be

The Attorney's Practice

made to him in form aforesaid, &c. returnable here [*ibide return*] at which day [*ut supra.*]

*Fi. fa. in debt
after Sci. fa.
for executors
on judgment
recov. rid by
testator.*

GEORGE the third, &c. To the Sheriff of B. greeting. We command you, that of the goods and chattels of *J. B.* late of *C. W.* in your county, innholder, otherwise called, &c. you cause to be levied as well a certain debt of 590 *l.* which *J. D.* in our court before our justices at *Westminster* recovered against him, as 50 *s.* which to the said *J. D.* in our said court were adjudged for his damages which he had sustained by reason of detaining that debt. And have you there that money before our justices at *Westminster* from the day of *St. Michael* in three weeks, to render to *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* for the debt and damages aforesaid. And whereupon it is considered in our said court, that the aforesaid *W.* and *T.* have execution against the said *J. B.* of the debt and damages aforesaid, by the default of the said *J. B.* whereof he is convicted; and have you there this writ. Witness, &c.

The first *Fieri facias* must be directed to the sheriff of the county where the action was laid; and on a return of *Nulla bona* you may have execution into any other county you shall think proper.

Elegit in debt. **GEORGE** the third, &c. To, &c. greeting. Whereas *E. F.* lately in our court before

in the Court of Common Pleas.

fore our justices at *Westminster*, by the consideration of the said court, recovered against *B. C.* late of, &c. as well a certain debt of fifty pounds, as ten shillings, which in our said court were adjudged to the said *E.* for his damages which he had by occasion of the detaining that debt, whereof the said *B.* is convicted. The said *E.* afterwards came into our said court, and by the statute in that case made and provided chose to have delivered to him all the goods and chattels of the said *B.* except his oxen and the beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, to hold to him the goods and chattels aforesaid, as his own proper goods and chattels; and also to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the said debt and damages shall be thereof levied; and therefore we command you, that all the said goods and chattels of the said *B.* except the oxen and beasts of his plow, and also a moiety of all his lands and tenements in your bailiwick, whereof the said *B.* on the octave of *St. Hilary* in the

year of our reign, on which day the said judgment was given, or at any time after, was seised, you cause to be delivered by a reasonable price and extent, to hold to him the said goods and chattels as his own proper goods and chattels; and to hold the said moiety as his freehold to him and his assigns, according to the form of the said statute, until the debt and damages aforesaid shall be thereof levied; and in what manner you shall
execute

execute this writ make appear to our justices at *Westminster*, on the morrow of *All Souls*, under your seal, and the seals of them by whose oath you shall make the said extent and appraisement; and have there this writ. Witnesses, &c.

*Elegit in tresp.
pass.*

GEORGE the third, &c. To, &c. greeting. Whereas *L. R.* lately in our court before our justices at *Westminster*, by the consideration of the said court, recovered against *H. II.* late of, &c. thirty-five pounds, which in our said court were adjudged to the said *L.* for his damages, which he had by occasion of a certain trespass done to the said *L.* by the said *H.* with force and arms against our peace at *W.* in your county, whereof the said *H.* is convicted. The said *L.* afterwards came into our court, &c. [*as before, using the word damages instead of debt and damages.*]

*Elegit after a
Sci. fa.*

GEORGE the third, &c. To, &c. greeting. Whereas lately in our court before our justices at *Westminster* it was considered that *E. S.* have execution against *H. S.* late of, &c. otherwise called, &c. by the default of the said *H. S.* as well of a certain debt of twenty pounds, which the said *E.* in our court before our justices at *Westminster* recovered against the said *H.* as of fifty shillings, which in our said court were adjudged to the said *E.* for his damages, which he had by occasion of detaining that debt, whereof the said *H.* is convicted. The said *E.* afterwards came, &c. *as before.*

GEORGE

GEORGE the third, &c. To the she-
 riff of *Berks*, greeting. Whereas *E. K.* ex-
 cutrix of the testament and last will of *G. K.*
 her late husband, deceased, lately in our
 court before our justices at *Westminster*, by
 the consideration of the same court, recover-
 ed against *G. M.* late of *London*, widow, one
 hundred and seventeen pounds and ten shil-
 lings, which in our same court before our ju-
 stices at *Westminster* aforesaid were adjudged
 to the said *E.* according to the form of the
 statute in that case lately made and provided,
 by the default of the said *M.* for the damages
 of the said *G.* which he had sustained by oc-
 casion of not performing certain promises and
 undertakings made by the said *M.* to the said
G. in his life-time, whereof the said *M.* is
 convicted. And the said *E.* afterwards came
 into our same court, and by the statute in such
 case made and provided chose to have deli-
 vered to her all the goods and chattels of the
 said *M.* except the oxen and beasts of her
 plow. And likewise a moiety of all her
 lands and tenements in your bailiwick, to hold
 to her the said *E.* the goods and chattels afo-
 re-
 said as her own proper goods and chattels,
 and also to hold the said moiety of the said
 lands and tenements as her own freehold, to
 her the said *E.* and her assigns according to
 the form of the statute aforesaid, until she
 hath levied the damages aforesaid. And there-
 fore we command you, that without delay
 you do deliver to the said *E.* by a reasonable
 price and extent, all the goods and chattels
 of the said *M.* except the oxen and beasts of
 her

Elegit on a
 judgment by
 Sci. fa. quare
 damna assideri
 non debent
 post mortem
 querentis port.
 per executri-
 cem.

Stat. 8 & 9
 W. 3. c.

her plow. And in like manner the moiety of her lands and tenements in your bailiwick, of which the said *M.* was seized on the octave of Saint *Hilary* in the seventh year of our reign, on which day judgment was thereof given, or at any time afterwards, to hold to her the said *E.* and her assigns according to the form of the statute aforesaid, until she shall have levied thereof the damages aforesaid. And in what manner you shall execute this our writ make manifest to our justices at *Westminster* aforesaid, on the morrow of *All Souls*, under your seal, and the seals of them by whose oath you shall make the extent and appraisement thereof. And have you there this writ. Witness, &c.

May have several Elegits.

A man may award on the roll *Elegits* into as many counties as he pleases, and execute all or any at his pleasure; but it is said, if he awards an *Elegit* into one county, extends the lands upon the writ, and afterwards files it, he is barred, and cannot sue out an *Elegit* into any other county.

Where by inquisition on an *Elegit* it is found that the plaintiff was seized of the lands at the time the judgment was given, upon an ejectment (which must be) brought to recover the possession, the plaintiff need only give in evidence the copy of the judgment, *Elegit* and inquisition thereupon filed, and is not bound to prove the party seized at the time of the judgment; and if he was not seized, it must be proved by the other side.

Of PROCEEDINGS for and against Attornies.

WHERE an attorney is plaintiff, the first process is an attachment of privilege, which is in the following form:

GEORGE the third, &c. To, &c. greet. *Attachment*
 ing. Attach *T. R.* so that you may have him *for an attor-*
 before our justices at *Westminster* on *Saturday* *ney.*
 next after the morrow of *All Souls*, to answer *Liber. Intrat.*
S. B. gent. one of the attornies of our court *220. k.*
 of the bench, according to the liberties and *V. Stat. 13*
 privileges of the same court for such attor- *Car. 2. stat.*
 nies and other ministers of the same bench *2. c. 2. f. 42*
 from time out of mind used and approved
 in the same, of a plea of trespass [*as the ac-*
tion is.] And have you there this writ. Wit-
 nesses Sir *William De Grey*, knight, at *West-*
minster, the day of
 in the year of our reign.

An attorney suing by attachment of privilege and nonsuited, may be taken in execution for the costs on a *Ca. Sa.* returnable on a general return. 3 *Wils.* 58.

If the attachment requires bail you must mark the sum sworn to on the back, thus:
 ——— Affidavit for 42 *l.* ——— And also the day it is sued out.

You must make out a *Præcipe*, containing *Præcipe to be*
 the plaintiff's and defendant's names, not ex- *left with the*
 ceeding four in the whole, with the return of *prothonotary*
 the *at the time of*

signing the writ.

the writ, day of signing, and the agent's or attorney's name, who sues out the same; this *Præcipe* you must leave with the prothonotary, who without fee or reward is to enter the same on a remembrance roll, to be kept in his office for that purpose; and he is not to sign (a) any attachment of privilege unless such *Præcipe* be left in his office at the time of signing thereof. *Hil. 11 Geo. 2.*

The form of the Præcipe.

Suffolk. Attachment of privilege for S. B. gentleman, one of the attornies, &c. against T. R. Debt.

R. R. Agent, *Ret. Saturday next after*
7 Oct. 1767. *the morrow of All Souls.*
Affidavit for 42 l.

You pay nothing to the prothonotary for signing this writ, and only one penny for the seal.

Of appearing putting in bail thereto.

If the attachment requires only a common appearance, a copy must be served with a notice, as in *fol.* and the appearance must be entered with the prothonotary who signed the writ, and if it requires bail, his clerk of the dockets prepares the bail-piece or recognizance, and attends a judge or the

(a) But the writ is to be first marked by the clerk of the warrants, for which nothing is paid, unless plaintiff is in arrear for termages.

court,

court, when the same is entered into, and the bail ~~judicial~~, or fresh bail is added, in the same manner as the filacer does on mesne process by original.

The declaration at the suit of an attorney begins in this manner:

In the Common Pleas.

*Easter term in the seventeenth year of
the reign of king George the third.*

Middlesex, *P.* late of, &c. was attached *Declaration by*
to wit. by a writ of our lord the *an attorney for*
king of privilege, issuing out of the court *fees and dis-*
here to answer *L. R.* gentleman, one of the *burséments.*
attornies of the court of our lord the king of
the bench here, according to the liberties and
privileges of the same court, for such attor-
nies and other ministers of the same bench
time out of mind used and approved in the
same, of a plea of trespass on the case, &c.
And whereupon the said *L.* in his proper per-
son complaineth, that whereas the said *P.* on
the nineteenth day of *December* in the year of
our Lord one thousand seven hundred and
thirty-eight, at the parish of *St. Clement*
Danes in the county of *Middlesex*, was indebted
to the said *L.* in thirty pounds of lawful
money of *Great Britain*, for work and labour
as an attorney and solicitor before that time
done and performed by the said *L.* upon the
retainer, and at the special instance and re-
quest of the said *P.* in and about the prose-
cuting, defending and soliciting diverse cau-
ses,

Quantum me-
suit thereon.

ses, suits and businesses, and for money laid out, expended and paid by the said *L.* at the like special instance and request of the said *P.* in and about the prosecuting, defending and soliciting of those causes, suits and businesses, and for money due to the said *L.* for his fees due, and of right payable to him in that respect; and being so indebted, he the said *P.* in consideration thereof, afterwards, *to wit*, on the same day and year, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *L.* that he the said *P.* would pay to the said *L.* the said sum of money when he should be thereunto requested. *And whereas* the said *P.* afterwards, *to wit*, on the same day and year, at the parish^{*} aforesaid in the county aforesaid, in consideration that the said *L.* upon the retainer of the said *P.* and at his special instance and request, had before that time done and performed other work and labour as an attorney and solicitor in and about other causes, suits and businesses, and laid out, expended and paid other money in and about the prosecuting, defending and soliciting of those causes, suits and businesses last mentioned, undertook, and then and there faithfully promised the said *L.* that he the said *P.* would pay to the said *L.* so much money as he reasonably deserved to have for his last mentioned work and labour; and so much money as he had laid out, expended and paid in and about the prosecuting, defending and soliciting the said last mentioned causes, suits and businesses, and so much money as was
due

due to the said *L.* for his fees due, and of right payable to him in that respect, when he the said *P.* should be thereunto requested. And the said *L.* averreth, that he reasonably deserved of the said *P.* for his said last mentioned work and labour, other thirty pounds of like lawful money, and that he had so laid out, expended and paid in and about the said prosecuting, defending and soliciting the said last mentioned causes, suits, and businesses, other thirty pounds of like lawful money; and that twenty pounds of like lawful money were due to the said *L.* for his fees, due and of right payable to him in that respect, *to wit*, at the parish aforesaid in the county aforesaid, whereof the said *P.* afterwards, that is to say, on the same day and year aforesaid, there had notice. *And whereas also* the aforesaid *P.* afterwards, *to wit*, on the same day and year, at the parish aforesaid in the county aforesaid, was indebted to the said *L.* in fourteen pounds of like lawful money, for the like sum of money by the said *L.* at the special instance and request of the said *P.* before that time expended, laid out, disbursed and paid; and being so indebted, the said *P.* afterwards, *to wit*, on the same day and year at the parish aforesaid in the county aforesaid, in consideration thereof undertook, and to the said *L.* then and there faithfully promised, that he the said *P.* the said fourteen pounds to the said *L.* when he should be thereunto requested, would well and truly pay and content; *Yet* the said *P.* in no wise regarding his said several promises and undertakings

Indeb. as-
sump for mo-
ney laid out.

Breach.

dertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *L.* in this respect, hath not paid to the said *L.* the said several sums of money, or any of them, or any part thereof (although the said *P.* afterwards, *to wit*, on the thirtieth day of *December* in the same year, at the parish aforesaid in the county aforesaid, was requested by the said *L.* so to do) but has hitherto refused, and still doth refuse to pay the same to the said *L.* to the damage of the said *L.* of thirty pounds; and thereof he bringeth suit, &c.

(a) Pledges for prosecuting $\left\{ \begin{array}{l} \text{John Doe,} \\ \text{and} \\ \text{Richard Roe.} \end{array} \right.$

Mr. *Rayner*, in his readings on stat. 2 *Geo.* II. chap. 23. sect. 23. hath given the profession a lecture on an action for fees, &c. See *Rayn. Read.* p. 62 to 107, including the previous steps necessary in regard to delivering the bill, before the commencement of the suit.

If an attorney be defendant, a bill must be prepared in the following form, according to the nature of the action.

(a) It hath been determined that *pledges* need not be put into the declaration by attachment of privilege. *Burns* 153. but see 2 *Will. Rep.* C. B. 142, 143, which seems *contra*.

In

In the Common Pleas.

*Of Easter term in the seventeenth
year of the reign of king George
the third.*

*To the justices of our lord the
king of the bench.*

Middlesex, *R.* R. gentleman, administrator *Bill against*
to wit, of all and singular the goods *at attorney at*
and chattels, and credits of *R. F.* clerk de- *the suit of an*
ceased, at the time of his death, who died *administrator.*
intestate, by *J. C.* his attorney complaineth
of *T. J.* gentleman, one of the attornies of
the court of our now lord the king of the
bench here present here in court in his proper
person, for that, whereas the said *T.* in the
life-time of the said *R. F.* *to wit,* on the *Indeb. as-*
ninth day of *April* in the year of our Lord *lump. for mon-*
1767, at *Westminster*, in the county of *Middle-*
sex aforeaid, was indebted to the said *R.* *ney had and*
F. in his life-time in 250*l.* of lawful money *received in*
of *Great Britain*, for so much money by the *life-time of*
said *T.* to the use of the said *R. F.* before that *intestate.*
time had and received; and being so indebt-
ed the said *T.* afterwards, *to wit,* on the same
day and year at *Westminster* aforeaid in the
county aforeaid, in consideration thereof un-
dertook, and then and there faithfully pro-
mised the said *R. F.* in his life, to pay him
the said sum of money when he should be re-
quested to pay the same; yet the aforeaid *Breach.*
T. not at all regarding his promise and under-
taking aforeaid, but contriving and fraudu-
lently intending craftily and subully to de-

*Administration
committed.*

Profer.

ceive and defraud the said *R. F.* in his life-time, and the said *R. R.* since the death of the said *R. F.* hath not yet paid the aforesaid sum of money, or any part thereof, to the said *R. F.* in his life-time, or to the said *R. R.* since the death of the said *R. F.* (to which said *R. R.* since the death of the said *R. F.* *to wit*, on the 16th day of *June* in the year of our Lord 1767, at *Westminster* aforesaid in the county aforesaid, administration of all and singular the goods, chattels and credits which were the goods, chattels and credits of the said *R. F.* at the time of his death, by *William*, by Divine Providence archbishop of *Canterbury*, primate of all *England* and metropolitan, was committed) although the aforesaid *T.* in the life-time of the said *R. F.* by him the said *R. F.* and after the death of him the said *R. F.* by the aforesaid *R. R.* *to wit*, on the 17th day of *June* in the year of our Lord 1767, aforesaid, at *Westminster* aforesaid in the county aforesaid, was requested so to do; but he hath absolutely refused to pay the same to the said *R. F.* and since the death of the said *R. F.* hath, and still doth refuse to pay the same to the said *R. R.* to the damage of the said *R. R.* of 300*l.* And thereupon he prayeth relief, &c. And the said *R. R.* bringeth here into court the letters of administration aforesaid, to him as aforesaid granted, which testify the granting of the administration aforesaid to the said *R. R.* in form aforesaid,

aforesaid, bearing date the day and year in that respect above mentioned, and so forth.

Pledges for prosecuting, *to wit*, { *John Doe,*
and
Rich. Ree.

Bill against an attorney and declaration thereon, amended by striking out words. *Barnes 24. See id. 26.*

In the Common Pleas.

Hilary term in the seventeenth year of the reign of king George the third.

To the justices of our lord the king of the bench.

Middlesex, *J. T.* by *E. B.* his attorney, com- *Bill against*
to wit, J. plaineth of *J. H.* gent. one of *an attorney on*
the attornies of the court of our now lord the *a promise to*
king of the bench here present here in court *deliver back a*
in his proper person, for that on the 12th day *gold watch, or*
of November in the year of our Lord 1767, at *pay 14 guineas*
the parish of St. Clement Danes in the county *for it, by a*
of Middlesex, in consideration that the said *certain day,*
J. T. at the request of the said *J. H.* then and,
there delivered to the said *J. H.* a gold watch
of the said *J. T.* and the said *J. H.* then and
there received the same gold watch of the said
J. T. he the said *J. H.* undertook, and then
and there faithfully promised the said *J. T.* to
U 3 deliver

Breach.

On a promissory note drawn by defendant and payable to plaintiff.

deliver back the said gold watch to the said J. T. or to pay the sum of 14*l.* 14*s.* to the said J. T. for the said gold watch, on or before the first day of *December* then next ensuing; yet the said J. H. not regarding his said promise and undertaking, but devising and fraudulently intending to deceive and defraud the said J. T. in this behalf, hath not yet delivered back the said watch to the said J. T. nor paid him the said 14*l.* 14*s.* nor any part thereof (although the said J. H. afterwards, *to wit*, on the first day of *December* in the year aforesaid, and often afterwards at the parish aforesaid in the county aforesaid, was requested by the said J. T. so to do) but hath hitherto refused, and still doth refuse, so to do. And whereas the said J. H. on the third day of *June* in the year of our Lord 1767, at the parish aforesaid in the county aforesaid, made his note in writing subscribed with his own hand, commonly called a promissory note, bearing date the same day and year last mentioned, by which note the said J. H. promised to pay to the said J. T. or his order, the sum of 3*l.* 5*s.* on demand, for value received; by reason whereof, and also by force of the statute in such cases made and provided, the said J. H. became liable to pay the said J. T. the said 3*l.* 5*s.* according to the tenor and effect of the said note. And being so liable the said J. H. in consideration thereof, afterwards, *to wit*, on the day and year last mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said J. T. to pay him

him the said 3*l.* 5*s.* according to the tenor and effect of the said note. *And also whereas* ^{Indebitatus} the said *J. H.* afterwards, *to wit*, on the 10th ^{assumpsit for} day of *January* in the year of our Lord ^{goods sold and} 1767, at the parish aforesaid in the county ^{delivered.} aforesaid, was indebted to the said *J. T.* in the sum of 20*l.* of lawful money of *Great Britain*, for diverse goods, wares and merchandizes before that time sold and delivered by the said *J. T.* to the said *J. H.* at his request; and being so indebted the said *J. H.* in consideration thereof afterwards, *to wit*, on the day and year last above mentioned, at the parish aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *J. T.* to pay him the said 20*l.* when he the said *J. H.* should be thereunto requested. *And also whereas* afterwards, *to wit*, ^{Quantum va-} on the day and year last above mentioned, at ^{lebant thereon,} the parish aforesaid in the county aforesaid, in consideration that the said *J. T.* had before that time sold and delivered diverse other goods, wares and merchandizes to the said *J. H.* at his request, he the said *J. H.* undertook, and then and there promised the said *J. T.* to pay him so much money for the said goods, wares and merchandizes last above mentioned, as the same at the time of the sale and delivery thereof were reasonably worth when he the said *J. H.* should be thereunto requested. And the said *J. T.* in fact saith, that the said goods, wares and merchandizes last above mentioned, were at the time of the sale and delivery thereof reasonably worth other 20*l.* of like lawful money, *to wit*, at

minister, and give it to one of the criers, who calls the defendant in court, for which you pay him 1s. After which you give a rule on the bill with the secondary for the defendant to appear, for which you pay 1s. 4d. *Note, get it stamped, &c.* viz. 1s. for the king's duty, and 4d. for the rule; and then you file the bill in the prothonotary's office, for which you pay 4d. *Note, paid in court 6d. for the rule.* And heretofore it was not necessary to give the defendant any other notice of filing such bill against him than the calling him in court as aforesaid by the crier, which, as all attorneys of the court were supposed to be personally present in court during the sitting thereof, was then thought to be sufficient notice. But many attorneys having been struck off the roll on forejudgers for want of other notice; and many living in such remote parts of the kingdom, that it was impossible for them to have notice time enough to give order for their appearance before the rule (which was a four day rule) was expired, this practice is altered; and now,

Where a bill shall be filed against an attorney of the court, no forejudger shall be entered for want of appearance, if the action be laid in *London* or *Middlesex*, and the attorney resides within 20 miles of *London*, until four days after notice in writing of filing such bill be given to such attorney or his agent, or left at his usual place of abode, and a rule given for such appearance as usual; and if such attorney resides above 20 miles from *London*, or the action be in any other county than *London* or *Middlesex*, no forejudger shall

shall be entered till eight days after such notice shall be given in manner as aforesaid, and a rule to appear; the said days to be exclusive of the days of giving such notice. *Hil.*
11 *Geo.* 2.

Common Pleas:

J. T.

against

J. H. gent. one of the attornies, &c.

*Notice of a bill
being filed.*

Take notice, that a bill was this day filed in the prothonotary's office in the Inner Temple *London*, against you the defendant *J. H.* at the suit of the plaintiff *J. T.* in an action of trespass upon the case on several promises; and unless you appear to the said bill on *Monday* the *twenty-sixth day of *January* instant, you will be forejudged the court.

E. B.

23 *Jan.* 1778.
To *J. H.* deft.

Attorney for the
plt.

Common Pleas.

S. J. against *H. B.*

Take notice, that there is left in the prothonotary's office, in the *Inner Temple, London*, a declaration against you the deft. at

* This is the day given by the secondary's rule which is inclusive; *sed vide regul. Hil. 11 Geo. 2 supra*, which says the days are to be exclusive,

the suit of the plt. S. J. in an action upon the case on several promises for goods sold and delivered, and for the balance of an account which the plaintiff lays to his damage of 100*l.* and unless you plead to the said declaration within four days next after the first day of next *Hilary* term, judgment will be entered against you by default.

To *H. B.* deft.

J. R. attorney
for the plt.

If the defendant appears, he enters his appearance with the prothonotary. If the defendant does not appear, you enter the bill and a forejudger on the roll, in the following form, beginning with a memorandum, as in the *King's Bench*. *Of forejudging an attorney.*

Middlesex, *to wit*, Be it remembered, that on the day of in this same term *G. H.* came here into court by *L. R.* his attorney, and exhibited to the justices of our now lord the king of the bench here his bill against *J. B.* gent. one of the attornies of the court of our said now lord the king of the bench here present here in court in his proper person, in a plea of trespass on the case, the tenor of which said bill followeth in these words; *to wit*, to the justices of our lord the king of the bench. *Middlesex*, to wit, *G. H.* by *L. R.* his attorney complaineth of *J. B.* gentleman, &c. (*the whole bill to*) and thereupon he prayeth relief, &c. Pledges for prosecuting *Memorandum.*

Forejudger.

secuting, *John Doe* and *Richard Roe*; whereupon the said *J. B.* being solemnly called came not, therefore he standeth forejudged from exercising his office of attorney of this court for his contumacy, &c.

You pay the prothonotary 2 s. for signing the forejudger, and the clerk of the warrants 1 s. 4 d. for striking the defendant off the roll, and then you may proceed against him as against a common person. And so must every other person; for after a forejudger he cannot be proceeded against by bill.

But if the defendant enters his appearance in time with the prothonotary, you deliver him a declaration and proceed as in other cases; but the declaration and issue begin with a memorandum in the form aforesaid, and in both cases you add the pledges to prosecute at the end of the declaration. You must also make all your writs, as *Venire facias*, &c. returnable on a day certain, *prox. post* the general return day.

A writ of privilege for an attorney sued in the palace court.

GEORGE the third by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the judges of our court of our palace at *Westminster*, and to every of them, greeting. Whereas as well by reason of our royal dignity as according to the ancient custom of our court of the bench at *Westminster* from time immemorial hitherto used and approved in the same, no attorney of our said court of the bench, being bound by oath to follow his office

office for us and our people, ought, nor for all the time aforesaid hath been accustomed, to be taken, arrested, imprisoned, or against his will drawn or compelled to answer any person before any of our justices or officers, or any other secular judges whatsoever, elsewhere or otherwise than by bill, to be filed against him before our justices of our said court of the bench, in or upon any pleas, complaints or demands which do not particularly concern us (pleas or causes of freehold, felony, and appeals only excepted.) And, whereas we have lately received information of the great complaint of *John Rayner* one of the attornies of our said court of the bench, that several ill-disposed persons, notwithstanding our dignity, the custom and privilege aforesaid, do, as we have understood, intend to take, arrest, imprison and disquiet the said *John*, or you have drawn, or do intend by your servants or officers to draw, into pleas or complaints to be levied in our court before you, which do not relate to us, the said *John*, whose constant attendance is required in our said court of the bench, which, should it be permitted, would be in future a very evil example to others, as well as totally take away the jurisdiction, custom, and privilege of our said court of the bench, and tend not only to the manifest detriment, derogation and diminution of our dignity, the jurisdiction of our said court of the bench, and the liberties, privileges, and customs thereof, but also to the great damage of many of our subjects prosecuting and defending suits

suits in our said court of the bench, and to the grievance of the said *John*, and to the great detriment of his clients. Wherefore the said *John* hath implored us to grant him his proper remedy in this behalf, and we being willing that what is just and reasonable should be done for the said *John*, and likewise that the jurisdiction, honor, custom, liberty and privilege of our said court of the bench so immemorially used and approved should be inviolably preserved, do command and firmly enjoin you, and each and every of you, that you and each and every of you do wholly desist from taking, arresting, imprisoning or in any wise molesting the said *John* at the suit of any person, and from proceeding in any plaint or plea whatsoever depending in our said court before you, any or either of you, against the said *John*, by whomsoever levied or to be levied, by whatsoever name the said *John* be therein called (pleas and causes of freehold, felony, and appeals only excepted.) And if you, or any of you, have taken the said *John* before the receipt of this writ against the custom, liberty, and privilege aforesaid, that then you, and each and every of you, immediately discharge the said *John* from that arrest, and that you inform the said parties plaintiffs in the said plaints from us, that they may prosecute their pleas and plaints aforesaid by filing their respective bills therein, against the said *John* before our justices of the said court of the bench, according to the custom thereof from time immemorial, used

and approved in the same, to obtain justice there, if they shall think it expedient so to do Witness Sir *William De Grey*, knight, at *Westminster*, the 13th day of *February*, in the 18th year of our reign.

GEORGE the third, &c. To the sheriffs of *London*, greeting. Whereas, according to the custom of our court of the bench at *Westminster* hitherto used and approved of in the same, the attornies of our said court of the bench, whilst they are prosecuting and defending suits and actions therein for their clients, ought not, nor have they for time immemorial been used, to be compelled to answer before us, or any of our justices or officers, or any other secular judges whatsoever, upon any pleas, complaints or demands which do not particularly belong to us (pleas of freehold, felony and appeals excepted) save only before our justices or our said court of the bench, by bill exhibited in our said court, and not by original writ. And we have lately received information by the complaint of *A. B.* one of the attornies of our said court of the bench, prosecuting, following, and defending suits and actions in our said court for his clients, that several ill-disposed persons, intending to disquiet the said *A. B.* have sued and prosecuted him by original writ or writs issued out of our high court of *Chancery*, returnable before our said justices of the bench, and by writ or writs of *Capias ad respondendum* issued forth thereupon, and have caused him the said *A. B.* to be

*Another where
an attorney
was arrested
by Capias ad
responden-
dum. 2.*

be arrested and detained in your custody, by virtue of one or more of the said writs of *Capias ad respondendum*, in suits which do not relate to us, or in pleas of freehold, felony, or appeals; whereby the said *A. B.* is unable to attend his said office as an attorney, upon the said several suits and actions depending in our said court of the bench, which, if it is permitted, will manifestly take away and be in derogation and diminution of the liberties and privileges of the said *A. B.* and to the great detriment of the said *A. B.* and his clients; and because we are willing that the jurisdiction, privileges, and customs, for so long time used and approved of in our said court of the bench, should be inviolably observed, We command you, that you desist from taking the said *A. B.* into your custody upon any of the said writs of *Capias ad respondendum*; and if the said *A. B.* be detained in your custody by any such writ or writs of *Capias ad respondendum*, and for no other cause, that then you supersede and suffer him to go at large, as you will answer the contrary at your peril; and that you inform the party or parties, plaintiff or plaintiffs in the suit or suits, that he, she, or they may prosecute his, her, or their said suits, before our justices of our said court of the bench, by bill or bills to be exhibited to the said justices against the said *A. B.* if he, she, or they think it expedient so to do. Witness, &c.

This writ must be engrossed on a four sixpenny stamp piece of parchment, and signed by

by the clerk of the warrants, which he will do *gratis*, (unless the attorney is in arrear for termages) and also by the prothonotary, *gratis* too; sealing 7 *d.*

Then deliver the writ to the secondary of the court, where the action is brought, whose fee for allowing same is 2*s.* 8*d.* for *Superfedeas* and searching office 1*s.* 4*d.* If attorney is in custody, the *Superfedeas* must be served on officer in whose custody he is.

Form of *Superfedeas* to the palace court.

“**T**O all and every the officers of his majesty’s palace court.

If arrested, discharge, if not, forbear to arrest *J. R.* gentleman at the suit of *B. G.* he having this day allowed his writ of privilege, as one of the attornies of his majesty’s court of common bench at *Westminster*; dated the day of *November*, 1777.

R. S.

A certificate of the allowance of the writ of privilege, the secondary will give you on demand.

Form of certificate of the allowance of writ of privilege.

To all, &c. as before.

This is to certify that *J. R.* gent. hath this day, &c. as in *Superfedeas*.

When the process for arresting is returned by the officer, that defendant is privileged,

X

the

the writ of privilege is spent, and another writ must be allowed if defendant wishes to avail himself of his privilege again, and so *toties quoties*, for it will serve him but in one action.

No attorney to be privileged in any suit, unless it appears on the face of the declaration that he sues for fees, and no privilege, where he is defendant.

An attachment against an attorney or any other, for a contempt, is in this form :

An attachment for a contempt. *GEORGE* the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting. Attach *L. J.* gentleman, one of the attornies of our court of the bench [*or A. B. any other person*] so that you may have his body before our justices at *Westminster* on next after to answer us of and upon such things as on our behalf shall be then and there objected against him; and have there this writ. Witness, &c.

This writ is obtained on rule of court, which must be taken to clerk in court or from office, who will thereupon make out attachment, for which he charges *13s. 4d.* this writ is taken to sheriff of county, in which party to be attached resides; who will make out warrant for *2s. 6d.*

Affidavit of service of a rule with an allocatur of costs, and a demand thereof, on or about such a day is sufficient for an attachment for non-payment of them. *2 Will.*
227.

Bill.

Bill of COSTS on proceedings against
an ATTORNEY.

	Out of pocket	Agent	Attorney
Warrant and instructions.	0 0 0 0	2 2 0	4 4
Searching of what court defendant admitted.	0 0 0 0	1 8 0	3 4
Drawing bill from 20 at one shilling per folio.	0 0 0 0	10 0 1	0 0
Engrossing at 4d. per folio parchment and duty.	0 1 0 0	4 4 0	7 8
Calling defendant into court.	0 1 0	1 0 0	1 0
Attending for that pur- pose.	0 0 0	1 8 0	3 4
Rule for appearance and duty.	0 1 1 1	2 8 0	3 6
Entering and filing bill.	0 12 4 0	12 4 0	12 4
Notice of bill filed, copy and service.	0 0 0 0	1 6 0	3 0
Searching for appearance.	0 0 0 0	1 8 0	3 4
Engrossing declaration at 4d. per sheet and duty to deliver.			

N. B. The rest of the bill runs the same, and the items therein for fees and disbursements, are usual in other suits in this court.

Of writs of Habeas corpus cum causa.

Writs of Habeas corpus cum causa.

THEY are used for two purposes; *First*, To remove causes from inferior courts into this court, to be here determined. *Secondly*, To remove the body of a defendant out of any other prison into the prison of the *Fleet*.

As to the first, many abuses having been committed in the obtaining and prosecuting such writs, several laws have been made for remedying the same.

Before the statute of 43 *Eliz. c. 5.* it was usual for a defendant in an action commenced in an inferior court, to suffer such cause to be proceeded in till issue joined, the jury sworn, and evidence given for the plaintiff, before he would deliver into court his writ of *Habeas corpus cum causa*, or other writ which he had before sued out for removing the said cause into this or some other of the courts at *Westminster*; and this done merely to put the plaintiff to as much expence as possible, and to come at a knowledge of his evidence. But by that statute it is enacted, That no writ of *Habeas corpus*, or other writ for the removing a cause out of any inferior court, shall be received or allowed by the judge or officer to whom the same shall be delivered (but that he may proceed in such cause as if no such writ had been delivered to him), except the writ be delivered

Cause not to be removed by Habeas corpus, unless delivered before the jury sworn.

ed

ed before the jury, which is to try the issue, have appeared, and one of them be sworn to try the cause.

And by the statute 21 *Jac.* 1. c. 23. no writ of *Habeas corpus*, *Certiorari*, or other writ to remove any action commenced within any city, liberty, &c. shall be allowed by the steward, judge, &c. of such court, unless delivered before issue or demurrer joined in such cause, so as the said issue or demurrer be not joined within six weeks after the arrest or appearance of the defendant to such action or suit.

And if any action commenced in such court of record in any city, liberty, &c. shall be removed by any writ or process, and afterwards be remanded back by writ of *Procedendo*, or other writ, then the said action shall never afterwards be removed or stayed before judgment, by any writ out of any court whatsoever.

And if in any action or cause not concerning freehold, inheritance, title of lands, lease or rent commenced in any such court of record, it shall appear or be laid in the declaration, that the debt, damages or thing demanded doth not exceed 5*l.* then such action shall not be stayed by any writ whatsoever, other than writ of error or attain.

But this act is only to extend to such courts of record in cities, liberties, &c. and for so long time only as there shall be an utter barrister of three years standing, steward, &c. or judge, or recorder of such inferior court, or assistant to such judge of the same

inferior court, as shall not be an utter barrister of that standing, and not of counsel in any action in such inferior court.

The subtilty of ill-designing people in time got over, and rendered ineffectual this act. A vexatious defendant sued in an inferior court for a debt under 5*l.* perhaps not 20*s.* would set up a fictitious action against himself for a pretended demand of above 5*l.* and then bring a *Habeas corpus cum causa*, which would take in both actions, and by this contrivance procure the smallest action to be removed into a superior court, whereby a plaintiff, that could not bear the expence of such superior court, has been obliged to submit to the loss of his just demands.

*Inferior courts may proceed in actions not exceeding 5*l.* though there be other actions for above 5*l.**

But by an act made 12 *Geo. I. c. 29. f. 3.* 21 *Geo. II. c. 3.* the judges of such inferior courts, as are described in the statute 21 *J. I.* may proceed in such actions, &c. as are therein specified, which appear or are laid not to exceed 5*l.* altho' there may be other actions against such defendants wherein the plaintiffs demands shall exceed 5*l.*

Habeas cor. directed to any sheriff (except of Lond. or Mid.) to be returnable on a day certain in term. If to the sher. of Lond. or Mid. may be

A writ of *Habeas corpus cum causa ad faciendum & recipiendum*, directed to any sheriff (other than of *London* or *Middlesex*) must be returnable in court at a day certain in term, and not be made returnable immediately or in the vacation. *Mich. 1654.*

But such writ of *Habeas corpus* directed to the sheriffs of *London*, or to the sheriff of *Middlesex*, may be granted in term or vacation

tion returnable immediately. *Same rule. Vide* returnable immediately. *postea*, fol. 314.

Where a writ of *Habeas corpus* made returnable immediately is directed to any sheriff, he ought to make his return the same day that the writ is delivered; and to bring the body immediately, as required by the writ. *Same rule.* *And the sheriff must return such writ the same day.*

If upon the return of the *Habeas corpus*, the prisoner is returned charged with a process out of the King's Bench or Exchequer, and with process out of the Common Pleas, he may be committed with those causes. *Same rule.* *Prisoner charged with process out of this court, may be committed, tho' charged with process out of K. B. or Exc. If charged with process out of this court, returnable at a day to come, may be committed.*

And if the prisoner upon a *Habeas corpus cum causa* be returned charged with process out of the Common Pleas, though it be returnable at a future day, he may be committed with this cause. *Same rule.*

All writs of *Habeas corpus* returnable in court, must be made returnable at a day certain. *Mitch.* 1654. *Hil.* 13, 14 *Car.* 2. *Return of a*

If a person in custody of any sheriff or gaoler, charged with process issuing out of the King's Bench or Exchequer, and not with any process out of this court, be minded to be turned over to the prison of the Fleet, he must procure himself to be charged with some process issuing out of the court of Common Pleas before he bring his writ of *Habeas corpus*, that he may be returned charged therewith, otherwise he cannot be turned over. See *Barnes* 400. *H. C. must be at a day certain. Of removing a prisoner into the Fleet.*

*The form of the writ of Habeas corpus
cum causa.*

*A H. C. to
the sheriff of
Midd. ret. im-
mediately be-
fore a judge.*

GEORGE the third, &c. To the Sheriff of *Middlesex*, greeting. We command you, that you have the body of *T. M.* detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, together with the day and cause of the taking and detaining the said *T.* before Sir *William De Grey*, knight, our chief justice [or before Sir *Henry Gould*, knight, one of our justices] of the bench, at his chambers in *Serjeants Inn* in *Chancery Lane*, immediately after the receipt of this our writ, to do and receive what our said chief justice [or justice] shall then and there consider of him in this behalf; and have there this writ. Witness, &c.

If the *Habeas corpus* be returnable before the chief justice, any other judge of the court may commit the defendant thereon to the *Fleet*.

The expences of this writ, allowance, &c. are.

	l.	s.	d.
Stamp duty	0	5	0
Judge signing	0	4	0
Notary signing	0	1	4
Seal	0	0	7
To the sheriff of <i>Middlesex</i> for the allowance	0	4	8
For the return thereof, if but the writ	0	2	4
For every writ more against the defendant	0	2	4
For a warrant to the bailiff to conduct the prisoner before a judge or into court	0	2	4
And if the defendant is in pri- son, then for a warrant to the gaoler to deliver him to the bailiff	0	2	4
To the bailiff for bringing him up	0	10	0
Besides the fees at the judge's chambers, or in court.			

GEORGE the third, &c. To the judges *A Hab. corp.*
of our court of our palace at *Westminster*, and *to the palace*
to every of them, greeting. We command *court.*
you, that you have the body of *J. C.* de-
tained in our prison under your custody, as
it is said, by whatsoever name he may be
called in the same, together with the day
and cause of the taking and detaining the
said *J. C.* before Sir *William De Grey*,
knight, our chief justice of the bench, at his
chambers situate in *Serjeants Inn in Chancery*
Lane,

Lane, immediately after the receipt of this writ, to do and receive what our said chief justice shall then and there consider of him in this behalf; and have there this writ. Witness, &c.

l. s. d.

The allowance at the marshal's	}	o	4	8
court for the first cause, is				
For every cause after the first	-	o	1	o
[If bailed] the stamp duty	—	o	2	o
Judge's clerk taking the bail	—	o	6	6

Ha. cor. to an inferior court within 5 miles of London may be ret. immediately.

Writs of *Habeas corpus* directed to the inferior courts of *London, Westminster, and Southwark*, and other courts within five miles of *London*, may be returnable immediately. *Mich. 1654. and Hil. 13 & 14 Car. 2. Vide antea, fol. 310, 311.*

Bail taken in absence of plt. or his attorney to be de bene esse; and if no exception within 20 days to be filed.

If bail be taken in the absence of the plaintiff or his attorney, the same is to be taken *de bene esse*; and if on notice in writing given to the plaintiff, or his attorney, of the names and additions of the bail, the time when, and before whom put in, no exception be taken within twenty days, then the bail is to be delivered over to be filed. *Same rules.*

If no exception, and bail not filed within 4 days after the 20, a Procedo.

And if no exception be taken to bail put in on a *Habeas corpus* before a judge at his chamber, then unless the bail be filed within four days after the expiration of the twenty days, a *Procedendo* may be granted, upon a certificate that the bail is not filed. *Same rules.*

Where

Where bail is taken of a person in custody, the judge's clerk is to deliver the bail to the prothonotary, to be filed if assented to; and for that purpose the prothonotary's fees are to be deposited; but the prisoner is not to be discharged until the bail be assented unto, or the plaintiff over-ruled in open court to accept the same upon examination. *Same rules.*

Bail taken of prisoners to be delivered to prothonotary to be filed. But prisoner not to be discharged till bail be assented to, &c.

In all cases where bail was put in in the inferior court, if the cause be removed by *Habeas corpus* into this court, bail must be put in here on the removal, though the debt be under 10 l. except the defendant be an heir, executor or administrator, &c.

Bail in all cases of removal where bail below, except.

When the *Habeas corpus* is allowed in the inferior court, and returnable before a judge at his chambers, the plaintiff's attorney must get an order from one of the judge's clerks for a *Procedendo*, unless the defendant put in bail by the time limited by the order, viz. in term time within four days, and in vacation within six days after notice of the rule, a copy of which must be served on the defendant's attorney.

Rule for Procedendo unless bail in 4 days in term, and in 6 days in vacation.

If the plaintiff's attorney dislike the bail, he serves the defendant's attorney with a like order for a *Procedendo*, unless better bail be put in within four days.

Rule for better bail.

If this exception to the bail be in vacation-time, 'tis usual (though I don't see to what purpose) to justify within the four days before a judge at his chambers, for which you pay 2 s. and then the bail must justify the first-day of the next term in court.

Of justifying.

The

The defendant's attorney must give the like notice to the plaintiff's attorney of the putting in bail, and justifying, as in other cases.

There is no limited time for the plaintiff's getting an order for a *Procedendo* unless bail be put in, and has been done after two terms; but if the defendant had put in bail in time, and the plaintiff had not declared in two terms, the cause had been out of court. *Barnes* 90, 91.

Causæ removed from cities and towns where the judges seldom go, to be laid in the county wherein, &c.

If a cause be removed by *Habeas corpus* out of the courts of *Canterbury, Southampton, Hull, Litchfield* or *Pool*, or other counties where the judges of *Nisi prius* seldom go, if the action be transitory, it must be laid in the county of *Kent, Southampton, York, Stafford* or *Derby*, or other county where such city or town lies, and the recognizance is to be taken accordingly. *Mitch.* 1654.

A Habeas corpus ad satisfaciendum to the warden of the Fleet to bring a prisoner up to be charged in execution.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the warden of our prison of the *Fleet*, greeting. We command you, that you have before our justices at *Westminster*, on *Wednesday* next after three weeks of the *Holy Trinity*, the body of *B. C.* late of *London*, stationer, detained in your prison under your custody, as it is said, by whatsoever name he is called in the same, to satisfy *S. T.* of 30*l.* for his damages which he has sustained, as well by occasion of the not performing certain promises and undertakings lately made by the said *B.* to the said *S.* as for costs and charges by him about

about his suit in that behalf expended, where-
of the said *B.* is convicted; and further to
do and receive what our said court shall then
and there consider of him in this behalf; *Clift's Entr.*
and have there, &c. 371.

2 cu pay.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
At the <i>Fleet</i> ——— ———	0	9	4
In court to the secondary ——— ———	0	9	0
Clerks ——— ———	0	2	0
Uspitall bringing up the prisoner	0	10	0
If you draw up the rule you pay } the secondary more — }	0	2	6
And at the <i>Fleet</i> ——— ———	0	2	6

A. Habeas corpus ad satisfaciendum may
issue to the warden of the *Fleet*, or the keep-
er of any inferior prison of a liberty or fran-
chise, returnable in court at a day certain,
and the number roll of the judgment to be *Number roll*
indorsed upon the writ by the attorney who *to be indorsed.*
sues it out, and such writ shall be a good
caute of detainer. *Alab.* 1654.

If a defendant be brought into court up- *On several*
on a *Habeas corpus ad satisfaciendum*, he can *judgments*
be charged in execution upon that judg- *there must be*
ment only, on which the *Habeas corpus ad* *separate writs*
satisfaciendum issued; and if there be several *of Habeas*
judgments, on which he is to be charged in *corpus ad sa-*
execution, there be a writ of *Habeas corpus* *tisfaciendum.*
on each judgment.

GEORGE the third, &c. To the *Habeas cor-*
marshal of our *Minsalva* before us, greet- *pus ad satisf-*
ing. *ciendum di-*

*read to the
marshal of the
King's Bench.*

ing. We command you, that you have before our justices at *Westminster*, on *Friday* next after fifteen days of *Saint Martin*, the body of *J. N. Esq;* in our prison, under your custody detained, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name he is called in the same, to satisfy *L. M. widow*, of *120*l.** which the said *J.* heretofore, *to wit*, on the *7th* day of *October* in the year of our reign before *Sir Robert Eyre, Knt.* late chief justice of our court of the bench, at his chambers situate in *Serjeants Inn* in *Chancery Lane, London*, acknowledged to owe to the said *L.* to be levied of his lands and chattels, as by the said recognizance in our court of the bench aforesaid remaining of record plainly appears. And whereupon it is considered in our said court, that the said *L.* have execution against the said *J.* of the said *120*l.** by the default of the said *J.* And whereupon our sheriff of *Middlesex* returned to our justices at *Westminster* from the day of *Saint Michael* in three weeks last past, that the said *J.* has no goods or chattels in his bailiwick, whereof he could cause to be made the said *120*l.** or any part thereof; and further to do and receive what our said court shall then and there consider of him in this behalf; and have there this writ. *Witnes,*
Ec.

Sci. fa.'

*Procedendo
to the palace
court on a
Habeas cor-
pus.*

GEORGE the third, *Ec.* To the judges of our court of our palace at *Westminster*, and to each of them, greeting. Whereas we by our writ lately commanded you,

you, that you shall have before Sir *John Eardly Wilmot*, knt. our chief justice of the bench, at his chamber situate in *Serjeants Inn* in *Chancery Lane*, *London*, immediately after the receipt of the said writ, the body of *R. W.* detained in our prison under your custody, as it is said, together with the day and cause of the taking and detaining him, by whatsoever name the said *R.* is called, to do and receive what our said chief justice should consider of him in that behalf; yet for certain causes in this behalf specially moving our justices of the bench aforesaid at *Westminster*, We command you, and each of you, that in all suits and complaints against the said *R.* at the suit of *J. W.* in our court before you moved or depending, you proceed with effect according to the law and custom of *England* and the court aforesaid, notwithstanding any writ lately directed to you to the contrary. Witness, &c.

GEORGE the third, &c. To, &c. *The like in another form.*
Whereas, &c. (reciting the writ of Habeas corpus): We command you, that in all and singular pleas and complaints in our court before you, against the said *L.* moved or depending, you proceed with effect, notwithstanding our said writ of *Habeas corpus* to the contrary lately thereupon directed to you. Witness, &c.

GEORGE the third, &c. To, &c. *On a writ of Habeas corpus returnable in court.*
Whereas we by our writ lately commanded you, that you should have before our justices

stices at *Westminster*, on *Wednesday* next after fifteen days of *Saint Martin*, the body of *C. H.* detained in our prison under your custody, as it was said, by whatsoever name he was called, together with the day and cause of the taking and detaining the said *C.* to do and receive what our said justices should consider of him in this behalf; yet for certain causes in this behalf moving our said justices at *Westminster*, We command you, that in all and singular suits and complaints, &c. as before.

As the *Habeas corpus* removes all causes against the defendant in the inferior court, the *Procedendo* carries back all the causes that were removed.

Of PRISONERS.

A Man having cause of action against a prisoner was formerly obliged to bring him into court by a *Habeas corpus*, and then declare against him; but by the *Stat. 4 & 5 W. & M.* it is enacted, That if any person be taken or charged in custody at the suit of any other person, upon any writ or writs issuing out of any of the courts of *Westminster*, and imprisoned for want of sureties for his appearance, the plaintiff in such writ may, before the end of next term after such writ shall be returnable, declare against such prisoner in the court out of which such writ or writs shall issue, whereupon such pri-

Where defendant is in custody for want of bail.

Plaintiff before end of next term after return of the writ may declare against such prisoner.

soner shall be taken, or charged in custody, and may cause a true copy of the declaration to be delivered unto such prisoner, or to the gaoler or keeper of the prison in whose custody such prisoner shall be, to which declaration the said prisoner shall appear and plead; but if he shall not appear thereto, the plaintiff shall in such case have judgment as if the prisoner had appeared and refused to plead. *And have judgment in default of appearance and plea.*

Where defendant remains in custody of sheriff for want of bail, plaintiff must declare against him in custody of the sheriff. *Barnes 400.*

No copy of a declaration shall be delivered to any prisoner, until after the process upon which such prisoner shall be taken or charged in custody be returnable. *Pasc. the return of the writ.*
5 W. & M.

A prisoner in custody on an attachment for a contempt of the court cannot be charged with a declaration without leave of the court; and the charging a defendant with a *Capias ad satisfaciendum*, whilst he was in custody of the sheriff of *Middlesex* on an attachment for a contempt of this court, has been held irregular. *Prisoner in custody for a contempt: not to be charged with a declaration or execution without leave.*

No rule shall be given for the defendant in custody to appear and plead to any declaration against him, until an affidavit be filed with the proper secondary of the delivery of the copy of such declaration, and of the time when, and the person to whom the said copy was delivered; and a copy of the said affidavit shall be produced to the pro- *No rule to plead till affidavit of the delivery of the declaration.*
Y tho-

thonotary before judgment signed together with a certificate from the proper officer, that no appearance is entered with him. *Pas. 5 W. & M.*

Declaration delivered before Menssem paschæ, or Crastinum animarum, if defendant appears within 10 days after the end of the respective term, he may imparl to the next term. Unifsi.

If a copy of a declaration be delivered before *Menssem paschæ*, or *Crastinum animarum*, and affidavit thereof made and filed, and the defendant doth not enter his appearance with the proper officer within ten days after *Easter* or *Michaelmas* term respectively, judgment may be entered against him upon such certificate, if rules have been given; but if he does enter his appearance as aforesaid within ten days after such term, he shall imparl until the next term, unless the action be in *London* or *Middlesex*, and the defendant be in prison within forty miles of the cities of *London* or *Westminster*; and then, though the prisoner doth appear within ten days after the end of the term, he shall plead two days before the essoin-day of the next term; and in default thereof, rules having been given, judgment may be entered against him, as aforesaid. *Same rule.*

If the declaration be delivered on or after Mens. pas. or Crast. anim. or in Hil. or Trin. term, and deft. appears 2 days before the essoin-day of the next term, he may imparl to the next term.

If the copy of the declaration be delivered on or after *Menssem paschæ*, in *Easter* term, or *Crastinum animarum* in *Michaelmas* term, or in *Hilary* term, or in *Trinity*, and the plaintiff shall thereupon give a rule to appear and plead, if the defendant enters his appearance two days preceding the essoin-day of the next term, he shall imparl until the next term; but if he shall not appear within

within that time, judgment may be entered against him, as aforesaid. *Same rule.*

If the writ be returnable in one term, and a copy of the declaration be delivered before the effoin-day of the next term, the plaintiff in such declaration may give a rule to appear and plead; and if the defendant doth not enter his appearance and plead by that time the rules are out, judgment may be entered against him. *Same rule.*

If the declaration be not entered or left in the office before the end of the next term after the return of the writ or process (by which the defendant shall be taken or charged in custody), and an affidavit made and filed in manner aforesaid before the end of twenty days after such term (*Easter term excepted*, and within ten days after *Easter term*), the prisoner shall be discharged, upon entering his appearance with the proper officer, by writ of *Superfedeas* made by him, according to the ancient practice of this court. *Same rule.*

If any gaoler or keeper of any prison, having received a copy of a declaration against any prisoner in his custody, shall suppress the same, or not deliver it forthwith to such prisoner, an attachment shall be entered against him. *Same rule.*

It shall be lawful for any person who shall have cause of action against any prisoner of the *Fleet*, after filing or entering a declaration, to deliver a copy to such defendant in any personal action, or to the turnkey or porter of the *Fleet* prison, and after a rule

*Eight days
time to plead.*

given to plead, to be out at eight days at most, after delivery of such copy of the declaration, and affidavit made of such delivery, to sign judgment against such defendant, as if he had been charged at the bar of the *Common Pleas*. Stat. 8 & 9 W. 3. c. 27. §. 13.

Common Pleas.

E. T.

against

W. W. late of, &c.

} In a plea of
trespass on
the case.

*Affidavit of
the delivery of
a declaration
against a pri-
soner.*

R. R. of, &c. gent. maketh oath, That he this deponent on the 12th day of *February* last, at the lodge of the *Fleet* prison, delivered a declaration in this cause to *W. Manning*, one of the turnkeys of the said prison, a true copy of which declaration is hereunto annexed. And this deponent also saith, that the said *W. Manning* did then acknowledge to this deponent, that the defendant *W. W.* was at that time a prisoner in the said prison of the *Fleet*.

Sworn, &c.

R. R.

*When declara-
tion to be en-
ter'd with pro-
thonotary be-
fore delivered.*

When the defendant is in the *Fleet*, the declaration must be entered with the prothonotary before it be delivered to the defendant, but need not be entered before the delivery when the defendant is in any other prison. But see 8 *Mod.* 227.

*In an action on
a joint bond
where one de-*

In an action of debt against two obligors on a joint bond conditioned for payment of money, one of the defendants was arrested,

and

and continued in custody for want of bail, *defendant could not be arrested, and now two terms being near expired, the plaintiff moved the court for time to declare, in regard the defendant in custody would be discharged for want of being declared against this term, and the other defendant could not be outlawed by that time. But the motion was denied. Fisher v. Tucker & al. Hil. 2 Geo. 2. Pract. Reg. C. P. 327.*

If any plaintiff shall declare against any defendant in custody of the warden of the *Misc.*, or of any sheriff or other officer, by virtue of any process of this court, and shall not further proceed to judgment in three terms after such declaration delivered inclusive of the term in which the declaration shall be delivered, the defendant having appeared, the defendant may be discharged out of custody by *Superfideas*, to be allowed by one of the justices of this court, if cause shall not be shewn by the plaintiff or his attorney, why such plaintiff had not proceeded before that time to judgment as aforesaid, upon notice to be given to either of them by the defendant's attorney or agent, and oath made of such notice. *Pass 8 Geo. 1.*

And in case any plaintiff having obtained judgment in this court against any defendant a prisoner, as aforesaid, shall not charge such defendant, so remaining a prisoner, in execution upon the judgment so obtained, within two terms next after such judgment so had and obtained, including the term in which the said judgment shall be signed, such de-

If plaintiff proceed not to judgment in 3 terms inclusive after declaration delivered, defendant to be discharged.

If plaintiff does not charge defendant in execution within 2 terms inclusive after judgment, defendant may be discharged.

defendant so remaining in prison may be discharged out of custody, where he shall be so detained, by *Superfedeas*, to be allowed as aforesaid, unless cause shewn on like notice and oath. *Same rule.*

Defendant sur-rendering in discharge of his bail before declaration delivered to be declared against within two terms, or discharged.

If any defendant shall render himself, or be rendered to the *Fleet* prison, in discharge of his bail, at the suit of any plaintiff, where no declaration has been delivered, unless the plaintiff shall declare against such defendant within two terms after such render, such defendant may be discharged out of custody, by *Superfedeas* to be allowed by one of the justices of this court, if cause be not shewn to the contrary by the plaintiff, or his attorney, upon notice to either of them given by the defendant's attorney or agent, and affidavit made of such notice. *Same rule.*

Plaintiff not obliged to charge prisoner in execution, second * term after judgment, if he brings writ of error. 2 *Wils.* 380. nor while a treaty subsists between the parties. 3 *Wils.* 455.

If declaration delivered, or judgment had before render, pls. to proceed to judgment in 3 terms after render, and

But where a declaration has been delivered, or judgment had against such defendant so rendering himself, or being rendered, before such render, unless the plaintiff shall proceed to judgment upon such declaration delivered within three terms after such render (the defendant having appeared) and charge

* Plaintiff shall have every day in second term, to charge prisoner. 2 *Wils.* 380.

charge such defendant in execution within two terms after such judgment obtained, the defendant may be discharged in like manner by *Superfedeas*, unless cause shewn upon the like notice and affidavit. *Same rule.*

charge deft. in execution within 2 terms after judgment or deft. to be discharged.

No copy of a declaration delivered at the *Fleet* prison against any prisoner there, shall be sufficient charge to hold such prisoner to bail, or to retain such prisoner in custody for want of bail, unless an affidavit that the plaintiff's cause of action amounts to ten pounds or upwards be first made, and filed in the proper prothonotary's office, and an indorsement made by the said prothonotary or his deputy upon such copy of a declaration, signifying the sum of money specified in such affidavit, for which sum so indorsed bail shall be required, and no more. *Hil. 8 Geo. 2.*

Copy of declaration not sufficient to charge prisoner in custody, unless affidavit be made that cause of action is 10l. or upwards.

If a defendant arrested by process issuing out of the court of *King's Bench*, and in custody for want of bail, remove himself by *Habeas corpus* to the *Fleet* prison, and the plaintiff charges him in the *Fleet* with a copy of a declaration, he is not obliged to make and annex an affidavit as by the above rule is directed, in regard there was an affidavit made of the debt when the plaintiff took out the process upon which the defendant was arrested; but if the declaration comes in as a new charge against a prisoner in custody, at the suit of another plaintiff, there the above rule must be observed. See *Rep. & Cas. of Praet. C. P.* 144. *Burnes* 75. *Praet. Reg. C. P.* 330.

The plt. at whose suit the prisoner was arrested need not make such affidavit.

A prisoner discharged for want of prosecution, if afterwards arrested on an action on the judgment, a common appearance shall be taken. Where a prisoner in the *Fleet*, or other gaol or prison, is discharged, or ordered to be discharged by this court, or any of the justices thereof, by *Superfedeas* for want of prosecution, and such prisoner is afterwards arrested or detained in custody by action of debt brought upon the judgment obtained in the cause, wherein such prisoner was so discharged, or ordered to be discharged, a common appearance shall be accepted for the defendant, in such action of debt upon the judgment. *Hil. 8 Geo. 2. Vide antea.*

Def discharged for want of proceeding to judgment may be afterwards taken in execution; aliter if discharged for want of being charged in execution. Where a defendant is discharged out of custody for want of the plaintiff's proceeding to judgment, the plaintiff may afterwards proceed to judgment and take the defendant in execution thereon, and the defendant shall not be discharged; but if the plaintiff has proceeded to judgment, and the defendant be discharged out of custody for want of being charged in execution, the defendant is totally discharged, and cannot afterwards be taken in execution on that judgment. *Barnes 376, 377.*

A prisoner on contempt not entitled to a day rule. A prisoner charged with an attachment for a contempt, which is a criminal prosecution, is not entitled to a day rule.

Prisoner arrested by process of B. R. removed into the Fleet, how to be proceeded against, or discharged. If a defendant in custody on a *King's Bench* process be committed by this court, or a judge of this court, to the prison of the *Fleet*, before a declaration delivered, the plaintiff cannot declare against him in the *King's Bench*, without removing him to the prison of that court by *Habeas corpus ad restandum*; but he may declare against him in

in this court; and for default of declaring in due time, this court may discharge the defendant out of custody. After a declaration delivered, the action must be carried on in that court, in which the plaintiff declared, though the defendant be removed to the prison of another court; and the *Supersedeas*, for default of subsequent proceedings, must issue out of that court in which the plaintiff declared.

Where a defendant was served with copy of process, but before declaration delivered became a prisoner in the *Fleet*, and the plaintiff entered an appearance for him, pursuant to the statute, and left a declaration in the office, and gave him notice of it, the court set aside the proceedings, and held, that the declaration ought to have been delivered at the *Fleet*. How to proceed when a defendant after being served with copy of process, and before declaration becomes a prisoner.

GEORGE the third, &c. To the Sheriff of *L.* greeting. Whereas *S. S.* is detained in our prison under your custody, by virtue of our writ returnable, before our justices at *Westminster*, on, &c. [the return] to answer *C. C.* in a plea of trespass, and also in a plea of trespass on the case, to the damage of the said *C.* of 20*l.* And because it sufficiently appears to our said justices at *Westminster*, that the said *S.* hath appeared in our said court, and found sufficient bail to answer the said *C.* in the plea of trespass on the case aforesaid; therefore we command you, that if the said *S.* is detained in our said prison under your custody, by occasion of the said action, Supersedeas on putting in good bail.

The Attorney's Practice

action, and no other, then you permit him to go at large, as you will answer the contrary at your peril. Witness, &c.

*The like to a
steward of a
liberty.*

GEORGE the third, &c. To chief steward of the liberty of *Bury St. Edmunds* in the county of *Suffolk*, greeting. Whereas by our writ we commanded our sheriff of *Suffolk*, that he should take *J. L.* gent. if he might be found in his bailiwick, and keep him safely, so that he might have his body before our justices at *Westminster*, at a certain day in the said writ specified, to answer *W. L.* gent. in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *W.* of 300*l.* and you, by virtue of a certain warrant upon our said writ by the sheriff of the county aforesaid thereupon directed to you, took the said *J.* within the said liberty, and still detain him in our prison under your custody; Yet because the said *J.* after the taking aforesaid found sufficient bail before our said justices at *Westminster*, to answer the said *W.* in the pleas aforesaid; therefore we command you, that if the said *J.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J.* to be discharged out of the said prison, and permit him to go at large. Witness, &c.

*Superfedeas on
entering a com-
mon appear-
ance.*

GEORGE the third, &c. To the sheriff of *W.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue

virtue of our writ of *Capias* issued out of our court before our justices at *Westminster*, returnable before our said justices, on, &c. [the return] to answer C. D. in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said C. 30*l.* whereby 20*l.* bail was directed to be taken: But because it sufficiently appears to our said justices at *Westminster*, that the said A. has appeared by W. R. his attorney to answer the said C. in the plea aforesaid, we command you, that if the said A. be detained in our prison under your custody, by virtue of the said writ, and for no other cause, that then you suffer him to go at large, as you will answer the contrary at your peril. Witness, &c.

GEORGE, the third, &c. To the she-^{Superior} riss of the city of *Canterbury*, greeting.^{for want of}
Whereas by our writ we commanded our late ^{prosecution,} sheriff of the city of *Canterbury*, that he ^{where the} should take J. L. if he should be found in ^{def. was} his bailiwick, and keep him safely, so that he ^{taken by the} might have his body before our justices at ^{late sheriff.} *Westminster*, from the day of St. Michael in three weeks in the first year of our reign, to answer J. A. in plea of trespass, and also for 16*l.* of debt upon demand; and the said J. L. by virtue of our said writ was taken, and is now detained in our prison under your custody; Yet because the said J. A. hath in no manner hitherto proceeded in the said pleas against the said J. L. and the said J. L. hath by L. R. his attorney appeared in our

court before our justices at *Westminster*, and is ready to answer the said *J. A.* in the pleas aforesaid, we therefore command you, that if the said *J. L.* by the occasion aforesaid, and no other, is detained in our prison under your custody, then without delay you cause the said *J. L.* to be discharged out of the said prison, and permit him to go at large. Witness, &c.

*Superfedeas
for want of
declaring in
two causes.*

GEORGE the third, &c. To the sheriff of *W.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias*, returnable before our justices at *Westminster*, on, &c. [*the return*] to answer *C. D.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *C.* 20*l.* whereupon bail for 20*l.* was directed to be taken: And whereas the said *A.* is also detained in our said prison under your custody by virtue of another writ of *Capias*, returnable before our said justices at *Westminster*, on, &c. [*the return*] to answer *E. F.* in a plea of trespass, and also in a certain plea of trespass on the case upon promise, to the damage of the said *E.* of 50*l.* whereupon bail for 40*l.* was directed to be taken: But because it sufficiently appeareth to our said justices at *Westminster*, that the said *A.* hath appeared in our court before our said justices by *W. R.* his attorney, to answer as well the said *C.* as the said *E.* in the several pleas aforesaid; and that the said *C.* and *E.* have not, and neither of them hath, pro-
ceeded

ceeded to declare against the said *A.* in due time after his commitment, pursuant to the rules of our court of *Common Pleas* at *Westminster*; we therefore command you, that if the said *A.* be detained in our prison under your custody for the causes aforesaid, and no other, that then you immediately discharge him from your said custody, and suffer him to go at large, as you will answer the contrary at your peril. *Witness, &c.*

GEORGE the third, *&c.* To the *Superseedeas* warden of our prison of the *Fleet*, greeting. *for want of*
Whereas *J. G.* in the term of the Holy *Trinity* last past [*if delivered in the vacation, in- an affidavit of*
sert the day] was charged in our said prison *the debt and*
under your custody with a copy of a declaration *indorsement on*
at the suit of *T. B.* in an action of debt upon bond for the sum of *the back of the*
because it sufficiently appears to our justices *declaration*
at *Westminster*, that no affidavit that the said *plaintiff's* cause of action amounted to 10 *l.* or upwards, was first made and filed in the proper prothonotary's office, nor an indorsement made by the said prothonotary or his deputy upon such copy of the declaration, signifying the sum of money which should have been specified in such affidavit, according to the late rule made for that purpose; and because the said *J.* hath appeared by his lawful attorney to answer the said *T.* in the plea aforesaid, we command you, that if the said *J.* be detained in our said prison under your custody, by virtue of the said declaration, and for no other cause, that then you *wherein with*
But *defendant was*
charged in the
Fleet.

suffer him to go at large, as you will answer the contrary at your peril. Witness Sir *William De Grey*, knight, at *Westminster*, the sixth day of *November* in the seventh year of our reign.

Superfedeas
for want of
plaintiff's pro-
ceeding to
judgment
within three
terms after
declaration
delivered.

GEORGE the third, &c. To the sheriff of *S.* greeting. Whereas *A. B.* is detained in our prison under your custody, by virtue of our writ of *Capias*, returnable before our justices at *Westminster*, on, &c. [*the return*] last past, to answer *C. D.* in a plea of trespass; and also in a certain plea of debt upon demand for 40*l.* And whereas the said *A.* afterwards, that is to say, on the 17th day of *May* last past, was charged with a declaration at the suit of the said *C.* in the plea aforesaid; but because it appeareth to our justices at *Westminster*, that the said *A.* hath appeared in our court of *Common Pleas*, to answer the said *C.* in the plea of debt aforesaid, and that the said *C.* hath not proceeded to judgment against the said *A.* within three terms after the delivery of the said declaration, as required by the rules of our said court, we command you, that if the said *A.* be detained in our prison under your custody, for the cause aforesaid, and no other, you permit him to go at large, as you will answer the contrary at your peril. Witness, &c.

Superfedeas
for not abarg-
ing defendant
in execution

GEORGE the third, &c. To the warden of our prison of the *Fleet*, greeting. Whereas *M. D.* on the 21st day of *June*

1766, rendered herself to our said prison of *within two*
the *Fleet* before *etq; one*
of our justices of our court of the bench in *terms after*
discharge of her bail, at the suit of *U. R.* *judgment.*
and *H. C.* for 40*l.* And because the said
U. and *H.* have not proceeded to charge the
said *M.* in execution within two terms next
after judgment obtained, according to the
rules of our said court of the bench, we
therefore command you, that if the said *M.*
be detained in your custody for that, and no
other cause, that then you suffer her to go
at large, as you will answer the contrary at
your peril. *Witness, &c.*

GEORGE the third, *&c.* To the war- *Superseas*
den of our prison of the *Fleet*, greeting. *for want of*
Whereas it hath been certified to our justices *proceeding to*
of our court of the bench at *Westminster*, *judgment and*
that *A. B.* was committed to our said prison *execution at the*
of the *Fleet* for want of bail, upon our writ *suit of several*
of *Habeas corpus*, at the suit of *C. D.* in a *plaintiffs.*
plea of trespass, and also in a certain plea of
debt upon demand for 45*l.* And on the
27th of *May* 1765, was charged with a de-
claration at the suit of *E. F.* in a plea of
trespass on the case for 50*l.* And on the
30th day of the same month, was charged
with a declaration at the suit of the said *C.*
in a plea of debt for 40*l.* And also on the
13th day of *June* then next following was
charged with another declaration at the suit
of *G. H.* in a plea of trespass on the case
for 20*l.* And for that it appeareth to our
said justices, that the said *C.* and *E.* or either
of them, have not proceeded to charge the
said

said *A.* in execution in due time in the said causes or either of them, according to the rules and orders of our said court ; and also, for that it appeareth to our said justices that the said *G.* hath not in due time proceeded to judgment against the said *A.* in the said cause, according to the rules and orders of our said court ; and because the said *A.* hath appeared in our said court by his lawful attorney in the several actions aforesaid ; therefore, &c.

Bill of COSTS on Proceedings against PRISONERS.

Michaelmas Vacation, 1777.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Retainer, attending and taking instructions.	0	0	0	0	2	2	0	4	4
Affidavit of debt.	0	2	7	0	4	1	0	5	7
Capias	0	4	10	0	7	11	0	11	0
Warrant thereon, and messenger	0	0	4	0	0	10	0	1	4
Paid officer for arrest	0	10	6	0	10	6	0	10	6

Easter Term, 1778.

Searching at <i>Fleet</i> prison for <i>Hab. Corp.</i> whereby prisoner was removed, and inspecting the return	0	0	0	0	1	8	0	3	4
Drawing declaration and copy fol. 11	0	0	0	0	5	6	0	11	0
Entering on roll and paid prothonotary	0	6	0	0	8	6	0	11	0
Copy on stamp to deliver to defendant in custody, and duty	0	0	3	0	2	1	0	11	11
Another copy to annex to affidavit	0	0	3	0	2	1	0	3	11
Delivering declaration at <i>Fleet</i> prison	0	0	0	0	1	8	0	3	4

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid turnkey	0	1	0	0	1	0	0	1	0
Affidavit of delivering declaration, duty and oath in vacation	0	3	7	0	5	1	0	6	7
Filing declaration, and affidavit with second- ary	0	0	0	0	1	8	0	3	4
Term fee	0	0	0	0	2	6	0	5	0
Porters letters and mes- sengers	0	0	0	0	1	0	0	2	0

Trinity Term following.

Rule to plead	0	2	2	0	2	6	0	2	10
Searching for plea	0	0	0	0	1	8	0	3	4
Drawing interlocutory judgment with award of inquiry, fo. 3	0	0	0	0	1	6	0	3	0
Ingrossing, proceedings on paper and duty, fo. 14	0	0	3	0	2	7	0	4	11
Entering same on roll	0	0	0	0	2	4	0	8	4

N. B. The rest of the fees will be the same as on other inquiries in this court, varying according to the length of the proceedings. See bill of costs on proceedings against a member of parliament. *Postea fol.*

COSTS of SUPERSEDEAS to discharge PRISONER out of CUSTODY.

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid for clerk of papers his certificate	0	3	6	0	3	6	0	3	6
Prothonotary's ditto	0	5	0	0	5	0	0	5	0
Three summonces to shew cause why defendant should not be discharged	0	6	0	0	6	0	0	6	0
Copies and service	0	0	0	0	3	0	0	6	0
Attendances	0	0	0	0	5	0	0	10	0
Affidavit of service	0	2	7	0	4	1	0	5	7
Judge's <i>Fiat</i> and order	0	6	0	0	7	0	0	8	0
<i>Supersedeas</i>	0	5	2	0	8	6	0	11	10
Appearance for defendant.	0	2	6	0	4	2	0	5	10

Proceedings in (a) ejectment.

*An action of
trespass and
ejectment,
what it is.*

AN action of trespass and ejectment is given to a tenant for term of years, who is ousted of his term, and he may thereby recover the remainder of his term and damages. It is now used as the most common action for trying titles to land in the room of many real actions.

This action is generally grounded on a mere fiction. The person who claims the messuages or lands in dispute, and who is called the lessor of the (b) plaintiff, is supposed to have made a lease of the premises to the plaintiff for term of years yet in being; the plaintiff is supposed to have entered by virtue of that lease, and the defendant, who is termed the casual (c) ejector (being only a nominal person) is supposed to have

(a) Ejectment is a fiction, and in the breast of the court. *Barnes* 180.

(b) Name of *nominal* plaintiff happening to be a real person's name, no cause for censuring the attorney; this proceeding being considered as purely fictitious, for he cannot release the action, and that a person in human nature, of the same name of the nominal plaintiff, is not to be taken to be the real plaintiff. *Barnes* 187.

(c) Casual ejector cannot bring a writ of error *Barnes* 189. Attorney ordered to *non pros* such a writ at his own expence, and pay costs. *Larres* 181.

entered upon the plaintiff and turned him out of possession.

The common method of commencing this action is by delivering a copy of the declaration to the tenant in possession of the premises, with a notice thereunder written to appear and defend his title, or else that the defendant, the casual ejector, will suffer judgment to go by default, and thereby the tenant be put out of possession. *Of commencing this action.*

The tenant in possession may be admitted to defend his title on entering into the common rule, viz. to become defendant in the room of the defendant the casual ejector, receive a declaration, plead the general issue, and at the trial to confess the lease, entry and actual ejectment of the plaintiff. *The tenant in possession may be admitted to defend his title, on entering into the common rule.*

In the Common Pleas.

Trinity (d) term in the seven'teenth year of king George the third.

(e) Middlesex, *J. JOHN Doe*, late of the parish of *St. George the Martyr*, in the county of *Middlesex*, yeoman, was attached to answer *Richard Roe* of a plea, wherefore with force and arms he entered *Declaration in judgment of five messuages.*

(d) Judgment refused upon declaration intituled *Trinity Term*, 17 *Geo. II.* instead of 16 and 17 *Geo. II.* In country causes, where declarations are of *Trinity*, notice may be good to appear in next *Hilary*, (passing over *Michaelmas*) though not the usual practice. *Barnes* 186.

(e) Rules for judgment for lands in *Denbighshire, Wales.* *Barnes* 181.

into five (*f*) messuages with the appurtenances in the (*g*) parish of *Stebon-Heath*, otherwise *Stepney*, in the county of *Middlesex*, which *Thomas Bland* and *Conrade de Gells* demised (*b*) to the said *Richard* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *Richard*, and against the peace of our sovereign lord the king; and whereupon the said *Richard* by *Joseph Dobyns* his attorney complaineth, that whereas the said *Thomas* and *Conrade* on the 25th day of *April* in the 6th year of the reign of his said majesty, at the said parish of *Stebon-Heath*, otherwise *Stepney*, in the county aforesaid, had demised to the said *Richard* the said tenements with the appurtenances; to have and to hold the said tenements with the appurtenances to the said *Richard* and his assigns, from the 24th day of *April* aforesaid in the year aforesaid, unto the full end and

(*f*) *One messuage or tenement* are too uncertain words in the declaration; and judgment arrested for that cause. *Barnes* 173.

(*g*) Court held the description of one messuage with the appurtenances, in the parish of *St. John the Baptist*, and *St. Michael*, in the city of *Coventry*, and county of the same city, or one of them, to be totally uncertain, and that one of the parishes could not be rejected as surplusage, that defendant could not know what to defend for, nor sheriff of what to give possession; and for this cause arrested judgment, after verdict for plaintiff. *Barnes* 184.

(*b*) Demise is never amended, in point of time, without content. *Barnes* 17, 186.

term of five years thence next ensuing and fully to be complete and ended; by virtue of which demise the said *Richard* entered into the said tenements with the appurtenances, and was possessed thereof; and the said *Richard* being so possessed thereof, the said *John* afterwards, *to wit*, on the said 25th day of *April* in the said 6th year, with force and arms, &c. entered into the said tenements with the appurtenances which the said *Thomas* and *Conrade* had demised to the said *Richard* in form aforesaid, for the term aforesaid which is not yet expired, and ejected the said *Richard* from his said farm, and other wrongs, &c. to the great damage, &c. and against the peace, &c. whereupon the said *Richard* saith, that he is injured, and hath damage to the value of 20*l*. And thereof he bringeth suit, &c.

Mr. *John Wilkinson*, I am informed that *Th. notice.* you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the said premises, do advise you to appear on the first (1) day of the next *Michaelmas* term in his majesty's court

(1) Where the notice to appear, on a vacant possession in *London*, was not on the first day, but in the beginning of *Mich.* term; rule was made for judgment, unless some person claiming title appeared within four days. *Barnes* 175.

The Attorney's Practice

of *Common Pleas* at *Westminster*, by some attorney of that court, and then and there by rule of the same court, to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession. I am

Your humble Servant,
John (k) Doe.

Declaration in ejectment is the first process. *Barnes* 173, 186.

In the Common Pleas.

*Easter term in the seventeenth year
of king George the third.*

Declaration in ejectment of manors, messuages, barns, stables, &c. Suffolk, *T. C.* late of *London*, gentleman, *to wit.* was attached to answer *L. S.* in a plea, wherefore with force and arms he entered into the manors of *K.* otherwise *K. H. C. H. B.* and *G. W.* and 50 messuages, 50 barns, 50 stables, 50 gardens, 20 cottages, one water corn-mill, one wind-mill, 1000 acres of land, 1000 acres of meadow, 1000 acres of pasture, 500 acres of wood, and 500 acres of furze and heath, with the appurtenances, in the parishes of *G. W. L.*

(*) The *English* notice at the foot of the declaration was subscribed by the nominal plaintiff, instead of the casual ejector, which court held bad, and discharged the rule for judgment. *Barnes* 172.

W. B.

W. B. and *K.* in the said county of *Suffolk*, which the honourable *M. G.* spinster, demised to the said *E.* for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of the said *E.* and against the peace of our sovereign lord the king; and whereupon the said *E.* by *J. W.* his attorney compluneth, that whereas the said *M.* on the first day of *January* in the 7th year of the reign of his said majesty, at *Ipswich* in the county aforesaid, had demised to the said *E.* the said manors and tenements, with the appurtenances, to have and to hold the said manors and tenements, with the appurtenances, to the said *E.* and his assigns, from the 29th day of *September* then last past, to the full end and term of seven years then next following, and fully to be complete and ended: By virtue of which said demise the said *E.* entered into the said manors and tenements with the appurtenances, and was possessed thereof; and the said *E.* being so possessed thereof, the said *T.* afterwards (that is to say) on the first day of *January* in the said 7th year, with force and arms, that is to say, with swords, staves, and knives, entered into the said manors and tenements with the appurtenances, which the said *M.* demised to the said *E.* in manner aforesaid, for the term aforesaid, which is not yet expired, and ejected the said *E.* out of his said farm, and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said *E.* saith he is injured,
and

and hath damage to the value of 20*l.* And thereof he bringeth this suit, &c.

T. H.

The notice.

I am informed that you are in possession, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim nor title to the same, do advise you to appear on the first day of next *Trinity* term in his majesty's court of Common Bench at *Westminster*, by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving friend,

20 May 1778.

T. C.

Declaration was delivered to tenant in possession, in *Trinity* vacation, with (*l*) notice to appear in *Hilary* term then next; tenant in *Michaelmas between*, entered an appearance, but proceeded no further; and four days after *Hilary* term, plaintiff finding no appearance, no common rule entered into, or plea given, left, or filed, signed judgment against casual ejector; tenant moved to set aside judgment, and on hearing council on

(*l*) Appearance should have been entered of the term mentioned in the notice. *Barnes* 250.

both sides, court was of opinion, that judgment was (m) regular. *Barnes* 250.

Lincoln, *A. B.* late of, *Essex*. was attached *Declaration in to wit.* *A.* to answer *C. D.* in a plea, *ejection on a double demise.* wherefore with force and arms he entered into 500 acres of land, *Essex*. in the parish of *S.* in the county aforesaid, which *E. F.* demised to the said *C.* for a term which is not yet expired; and into 500 other acres, *Essex*. in the parish of *S.* aforesaid in the county aforesaid, which *G. H.* demised to the said *C.* for a term which is not yet expired, and ejected him from his said several farms, and other wrongs to him did, to the great damage of the said *C.* and against the peace of our lord the now king, *Essex*. And whereupon the said *C.* by *W. R.* his attorney complaineth, that whereas the said *E.* on the
 day of in the year 1. *Demise.*
 of the reign of the said lord the king, at
 in the county aforesaid,
 had demised to the said *C.* the tenements aforesaid first above mentioned, with the appurtenances; to have and to hold the same tenements first above mentioned with the appurtenances, to the said *C.* and his assigns, from the feast of then last past, to the full end and term of

(m) But as the title had not been tried, the judgment was set aside on payment of costs, entering appearance of proper term, and into common rule by consent. *Barnes* 250.

2. *Demise.*

years, from thence following, and fully to be complete and ended. *And whereas also* the said G. on the same day of in the said year of the reign of our said lord the king, at afore-said in the county afore-said, had demised to the said C. the tenements afore-said last above mentioned with the appurtenances; to have and to hold the same tenements last above mentioned with the appurtenances to the said C. and his assigns, from the said day of then last past, to the full end and term of years from thence next following, and fully to be complete and ended: By virtue of which said several demises the said C. entered into the several tenements afore-said, with the appurtenances, and was possessed thereof; and the said C. being so possessed thereof, the said A. afterwards, that is to say, on the day of in the said year of the reign of our said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances, respectively demised to the said C. in manner afore-said, and upon the possession of the said C. thereof, and ejected the said C. out of his said several farms (his said several terms therein not being ended) and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said C. saith, that he is injured and damaged to the value of 10*l.* And thereof he bringeth suit, &c.

Sixteen (n) declarations in ejectment, ordered to be consolidated into one, after the issues joined. *Barnes* 176.

In many cases the demise may be laid on a day after that term of which the declaration is; as where a title accrued at *Christmas*, a declaration of *Michaelmas* term is delivered before the effoin-day of *Hilary* term, and the demise is laid to be on the first day of *January*, if the tenant does not appear and defend, the court will give judgment against the casual ejector, and the tenant cannot move in arrest of judgment, as being no party to the suit; neither can a writ of error be brought in the casual ejector's name. If the tenant does appear, all will be right, for a declaration and issue will be made up of *Hilary* term, which will be after the demise.

Demise may be laid on a day after the term the declaration is of.
Pract. Reg. C. P. 164.

No (o) judgment shall be entered against the casual ejector without motion first made by a serjeant in court, and oath in writing of

No judgment against casual ejector with-

(n) Each declaration contained a large number of messuages, and word for word the same. *N. B.* had each declaration been for one messuage only, plaintiff might have tried them separately. *Barnes* 176.

(o) Court declared that the intent of signing judgment against the casual ejector, was only that the plaintiff, after having tried his cause against the landlord (tenant not being party) might have the benefit of his verdict, and take possession under the judgment, which under verdict he could not; and that it was reasonable (upon a proper affidavit) to grant a rule to shew cause, before judgment against the casual ejector could be signed, to prevent the ill consequence of taking possession immediately after. *Barnes* 179.

notice

out notice, and notice to the owner or tenant in possession of the lands in question, notwithstanding any former rule. *Pasc. 12 Car. 2.*

To whom declaration in ejectment may be delivered. Delivery of declaration in ejectment must be to the tenant himself or his (p) wife, otherwise not good, though it be to the tenant's (q) father, (r) son, (s) daughter, (t) sister, (u) servant, unless the tenant afterwards acknowledges the receipt thereof, which (x) acknowledgment must be proved to the court by affidavit.

The contents of the declaration, as well as those of the notice or subscription (y) thereto of the casual ejector, to the tenant in possession, must be so signified and explained by the party serving to the party served, at the time of the service, as be fully understood by the latter, be the service on the tenant in possession or upon any other person; which must always be on the premises in question; except only when the tenant is served personally, for then it need not.

(p) *Bul. Ni. Pri. 95. Barnes 178. 180, 181, 194. See Wilf. Rep. C. B. 263.*

(q) *Barnes, 176.*

(r) *Barnes 190.*

(s) *Barnes 175, 183, Co. Cas. 115.*

(t) *Rich. Reg. 167.*

(u) *Barnes 188.*

(x) *Bul. Ni. Pri. 95. Co. Cas. 115. Barnes 175, 176, 185. Rich. Reg. 167.*

(y) *Barnes 167, 168, 169, 185.*

In every case of service of the declaration, in the absence of the tenant, (the cases of serving tenant's father, daughter, sister, servant, with those of deserted possessions, and those especially provided for by *stat. 4 Geo. 2. chap. 28. sect. 2.* always and only excepted), there must be a tender of the copy to and refusal thereof by tenant, at time of attempting to serve it, either proved or confessed; and that above acknowledgement by tenant, of receipt of copy, will not be deemed sufficient (except as before excepted) in this court. See *Barnes* 171.

Service of the declaration in ejectment on the servant of the tenant in possession, fixing at the same time copy of declaration, on street door, deemed sufficient in this court; as well, when tenant does not abscond, as when he does. See *Barnes* 188, 190, 192.

The declaration was tendered to the tenant in possession, whereupon it was left upon the floor in his presence; and he retiring into a parlour, and shutting the door, the person who so tendered and left the declaration, read the subscription aloud, so that the tenant might hear it; this was held good service. *Barnes* 185.

The tenant in possession secreting himself in the house, so that he could not be personally served with a declaration in ejectment; a rule was made to shew cause, why service of it on the servant at the house, should not be good; the rule to be served on the same manner. *Barnes* 188.

On

On affidavit, that the tenant absconded to avoid being served; that she came into the possession surreptitiously, and of service of declaration in ejectment on her son, who is her servant, manages her affairs, and lives in her family; rule to shew cause, why such service on her son and servant, should not be deemed good service, and leaving a copy of this rule at her house good service, made absolute. *Barnes 190.*

On affidavit, that one of the tenants is a lunatick; that one C. lives with, transacts her business, and has the sole conduct thereof, and of her person; but would not permit the deponent to have access to her with the declaration in ejectment; whereupon it was delivered to C. Rule that she and C. both shew cause, why this service should not be good; and service of this rule on him be good service thereof. *Barnes 190, 191.*

On affidavit, that the tenant in possession secreted himself to prevent his being served with a declaration in ejectment, and could not be served, though frequent endeavours had been used; and that the declaration had been delivered to his daughter, who kept his house (being a public house); and that she was acquainted with the contents of the subscription. A rule was made for the tenant to shew cause, why such former service should not be deemed good service; the rule to be served on the daughter at the house. *Barnes 192.*

Service of declaration on church-wardens and overseers of parish, who rented an house for
for

for harbouring some of the parish poor; and did not otherwise occupy the house than by placing the poor in it, deemed sufficient. *Barnes* 181.

Upon the delivery of a declaration in ejectment in *London* or *Middlesex*, the tenant in possession is to be acquainted, that he is to appear by his attorney here in court in defence of his title, in the beginning of the next term after the delivery of the declaration. And the plaintiff shall take nothing by his motion for judgment against the casual ejector for default of appearance, unless the motion be made within one week next after the first day of every *Michaelmas* term, and every *Easter* term, and within four days after the first day of every *Hilary* and *Trinity* term. *Trin.* 32 *Car.* 2.

Tenant in possession to have notice to appear the beginning of the ensuing term.

Within what time motion for judgment must be made.

This rule relates only to declarations in ejectment served upon tenants in possession; and an ejectment on a vacant possession in *London* or *Middlesex*, on *stat.* 4 *Geo.* II. *chap.* 28. may be moved at any time in term. *Barnes* 172.

No instance in case of vacant possession, (except such as are within *stat.* 4 *Geo.* II. *chap.* 28. concerning landlords and tenant by lease, with a clause of re-entry) can be adduced, in which any person claiming title, hath been let in to defend; for he who can first seal a lease on the premises, may obtain possession, and any other person claiming title, may eject him if he can; and by the constant practice of this court, no defence can be made in this case, but by the defen-

dant in the ejectment, who is a real ejector.
Barnes 177.

*Declaration
must be deli-
vered before
Effoin day of
term*

A true and examined copy of the declaration on a treble penny stamp sheet of paper, must be delivered to the tenant on or before the Effoin day of the then next term. *5 C. Dig. 249. Barnes* 172, 173. otherwise plaintiff cannot have judgment till the subsequent term; and the reason is, because the declaration is the first process *Barnes* 173.

*Notice in coun-
try ejectments.*

In a country ejectment the tenant is to appear and plead within four days exclusive after the next issuable term; but if the lands lie in a county where the assizes are held but once a year, I apprehend he is not to appear and plead till four days after the term next preceding such assizes.

*In Lond. and
Middlesex.*

If the lands lie in *London* or *Middlesex*, the notice to appear should be for the first day of the next term; if in any other county, the notice may be for the beginning of the next term, or for the next term generally.

Leave to plead *ancient* (z) *demesne*, upon (a) affidavit, that premises in question were reputed to be lands in *ancient demesne*. *Barnes* 185.

(z) *Barnes* 194, if he applies within the first four days of the term, for if this plea be not confined to a time certain, great delay of justice must follow; if plaintiff prevails on this plea to jurisdiction of court, judgment must be that defendant answer over. *Barnes* 187.

(a) Affidavit sufficient to shew probable cause for pleading this plea. *Barnes* 185.

To move for judgment, you make an affidavit of the service of the declaration in this form:

In the Common Pleas.

Richard Roe } In ejectment on the demise
against } of *Thomas Bland and Conrade*
John Doe, } *de Golls.*

L.R. of, &c. makes oath, that he this deponent did, on the day of *Affidavit of service of a declaration in ejectment.*
last past, deliver to Mr. *John Wilkinson*, the tenant in possession of the premises mentioned in the declaration hereunto annexed, or of some part thereof, a true copy of the said declaration, and of the notice there under written, and did at the same time inform the said *John Wilkinson*, that unless he would appear in this court by some attorney thereof on the first day of this present *Michaelmas* term, and cause himself by rule of the said court to be made defendant in the room of the casual ejector *John Doe*, judgment would be entered against the said casual ejector by default, and that he the said *John Wilkinson* would be turned out of possession; or words to that or the like effect.

Affidavit of service "on *A. B.* tenant, or *C.* his wife," not sufficient, *Barnes* 173, nor "on the wives of *A. B.* who, or one of them, are tenants." *Id.* 174, 175, but "on the wife of tenant in possession, as she informed deponent, and as he verily believes," held sufficient. *Id.* 194. Rule to make service

service good, set aside, because the affidavit on which it was grounded, was sworn by ~~one~~ plaintiff's attorney, as a commissioner. ~~11~~ 9.

On this affidavit you get a serjeant to move for judgment against the casual ejector.

You pay,

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the duty and oath of the } affidavit ————— }	0	2	6
To the serjeant to move ———	0	10	6
Rule duty, and filing the affidavit	0	6	0

In the Common Pleas.

*Hilary the seventeenth of king George
the third.*

Rule for judgment against the casual ejector.

Hunt against Jones, } **T**Welfth day of February, upon the affidavit of *Thomas Shewell*, gent. It is ordered, that unless *William Collins*, tenant in possession of the tenements in question, or any other person concerned in the title thereof on *Saturday* next shall appear by an attorney of this court, who shall then forthwith receive a declaration, and plead thereto the general issue, and consent to the common rule for confessing lease, entry and ouster, upon the trial to be had, let judgment against the casual ejector be entered; and in the

the mean time proceedings are to stay, upon the motion of master serjeant Baynes.

By the court.

14. Entered

Fotbergill.

No declaration in ejectment shall be taken of received by the secondary, unless signed by some serjeant at law, and delivered by himself to the secondary in open court. *Secondary not to receive decl. in ejectment unless signed by a serjeant.*

Hil. 7 Geo. 2.

The secondary shall the morning next after the end of every term, and at all other times when required, shew to any person, who shall demand the same, his alphabetical paper of ejectments, moved or delivered into court in each term. *Secondary, on request, to shew his alphabetical paper of ejectments.* Same rule.

When the rule is out, you search the prothonotary's plea-book, and if no plea is left, you ingross the declaration on a double half-crown stamped sheet of paper, to which you affix the rule against the casual ejector, and the prothonotary will sign judgment; then enter your judgment by *Nil dicit* on the roll, and make out a writ of *Habere facias possessionem*,* for which you pay duty 1s. 6d. Signing 1s. 4d. Sealing 7d. *Of signing judgment against the casual ejector.*

If the tenant (b) appears, his attorney gets a blank rule from the secondary, for which he pays 6d. then fills it up according to the ensuing form, and signs his name at the bot- *Of the tenant's appearing.*

(b) Though appearance is generally entered after first four days of term, yet it is always considered as appearance of first day of the term. *Barnes 188.*

The Attorney's Practice

tom of it, ingrosses the general issue, Not guilty (*posse* ,) in a double penny stamped sheet of paper, and annexes the rule to it, after he enters an appearance for the tenant with the proper filacer, who there stamps the rule, and then leaves the plea rule annexed with the prothonotary.

Appearance for tenant (*c*) in possession, gets be entered with filacer; and the common rule marked by him, before left in the prothonotary's office. *Barnes* 178.

The expence is as follows:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Search for motion for judgment against the casual ejector }	0	0	6
Blank rule ——— ———	0	0	6
Entering appearance ——— ———	0	2	0
Entering plea ——— ———	0	2	0

In the Common Pleas.

Michaelmas term seventeenth year of George the third.

The general rule.

Middlesex, **I**T is ordered by consent of *J.* to wit. *D.* attorney for the plaintiff, and *L. R.* attorney for *J. W.* who claims title to the tenements in question, that the said

(*c*) The common rule by consent, having been entered for tenant, without consent, rule to shew cause, why the judgment signed against the casual ejector, should not be set aside, was discharged with costs *Barnes* 175.

J. W.

J. W. shall be admitted defendant; and that the said *J. W.* shall immediately appear by his attorney, who shall receive a de-
pleas n, and plead thereto the general is term; and at the trial to be had
pan shall appear in his proper person, or counsel or attorney, and confess the
the entry and ouster of so much of the te-
the specified in the plaintiff's declara-
the tions are in the possession of the said de-
 fendant or his tenants, or any persons claim-
 ing by or under his title; or that in default
 of judgment shall be thereupon entered
 against the defendant *John Doe* the casual
 ejector; but proceedings shall be stayed
 against him until default shall be made in any
 of the premises; and by the like consent it
 is further ordered, that if by reason of any
 such default the plaintiff shall happen to be
 nonsuited upon the trial, the said *J. W.*
 shall take no advantage thereof, but shall
 thereupon pay to the plaintiff costs to be
 taxed by the prothonotary. And it is fur-
 ther ordered, that the lessor of the plaintiff
 shall be liable to the payment of costs to the
 said *J. W.* by the court here to be in any
 manner allowed or adjudged.

By the court.

J. D. for the plt.

L. R. for the deft.

Tenants in possession appeared with filacer,
 and entered into common rule, which was
 left in prothonotary's office, intituled with
 true name of cause, but by mistake in body

Roe against Doe for five messuages with the appurtenances, in the parish of Stepney in the county of Mid. on the demise of T. Bland and Con. de Golls.

of plea, name of plaintiff's lessor was inserted (as person complaining) instead of nominal plaintiff's: attorney looking upon plea as null, signed judgment against ejector, which judgment was set aside with costs as irregular, plea being properly intitled and no nullity. *Barnes* 191.

From this rule the plaintiff's attorney gets two rules drawn up by the secondary in the same manner on stamp paper, one for each party; this costs 7s. and then the plaintiff's attorney will make up the issue, and deliver a copy of it, and notice of trial to the defendant's attorney; and thereupon proceed to trial as in other cases.

Where several defendants, and some refuse to confess lease, entry, &c. If there be several defendants, and at the trial the plaintiff obtains a verdict against some of the defendants, and the other defendants refuse to confess lease, entry and ouster, the plaintiff may sign judgment against the casual ejector as to them. *Barnes* 121, 174.

If Issue not paid for, judgment against defendant who appeared. If the defendant's attorney does (d) not pay for the issue, the plaintiff's attorney may sign judgment against the defendant, but not against the casual ejector, *ut (e) dicitur*; but see the words of the rule by consent.

(d) *Barnes* 176. (e) *Barnes* 253, in *Calcem*.

in the Court of Common Pleas.

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*A Nisi prius record in ejectment,
with the postea.*

*pleas at Westminster before Sir Wil-
liam De Grey, knight, and his com-
panions, the lord our king's justices of
the bench, of the term of Easter in
the seventeenth year of the reign of
our sovereign lord George the third,
the grace of God, of Great Britain,
ter France, and Ireland, king, defender
time the faith, &c.*

Ro. 579.

Middlesex, *C. L.* late of the parish of St. *D e' arations*
to wit, John the Baptist in the pre-
cinct of the Savoy in the Strand in the county
aforesaid, gent. was attached to answer R.
R. of a plea, wherefore with force and arms,
five chambers and one kitchen with the ap-
purtenances, in the precinct of the Savoy
aforesaid in the Strand in the county afore-
said, which Sir P. B. bart. and T. B. esq; to
the aforesaid R. did demise for a term which
is not yet past, he the said C. entered, and
the said R. from his farm aforesaid ejected,
and other enormities to him did, to the
great damage of him the said R. and against
his present majesty's peace. And whereupon
the said R. by J. S. his attorney complain-
eth, that whereas the aforesaid Sir P. B. and
T. B. the fifth day of January in the sixth
year

year of his present majesty's reign, at the parish of *St. Clement Danes* in the county aforelaid, did demise unto him the said *C.* the tenements aforelaid, with the appurtenances; to have and to hold the tenements aforelaid, with the appurtenances, to the said *R.* and his assigns, from the 11th day of *December* then last past, unto the full end and term of five years from thence next following and fully to be complete and ended. By virtue of which demise the said *R.* into the tenements aforelaid, with the appurtenances, did enter, and was thereof possessed; and he the said *R.* so being thereof possessed, the aforelaid *C.* afterwards, to wit, the same 5th day of *January* in the 6th year aforelaid, with force and arms, &c. into the tenements aforelaid, with the appurtenances, which the aforelaid Sir *P. B.* and *T. B.* to him the said *R.* in form aforelaid had demised for the term aforelaid, which is not yet past, did enter, and him the said *R.* from his farm aforelaid did eject, and other enormities did to the said *R.* to the great damage of the said *R.* and against the peace of his present majesty; whereupon he saith, that he is damaged, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

Plea.

And the said *C. L.* by *G. H.* his attorney cometh and defendeth the force and injury by the aforelaid *R.* against him charged, when and where, and in such manner, as this court shall award, and saith, that he is not guilty of the trespass and ejectment aforelaid

said, in such manner and form as the said *R. R.* hath against him above complained:

And this he putteth himself upon his oath. And the aforesaid *R.* doth so likewise. Therefore the sheriff is com-

manded to cause to come here in five weeks from the feast-day of *Easter* twelve good and lawful men of the body of his county, every one of whom to have 10*l* at least by the year in lands, tenements or rents, by whom the truth of the matter may be better known, and who neither are any ways related to the said *R. R.* plaintiff, nor to the said *C. L.* defendant, to recognize whether the said *C. L.* is guilty of the premisses, as the said *R.* above complaineth, because as well the said *R.* as the said *C.* between whom the contention thereupon is, have put themselves upon their country.

*Award of the
Venue.*

Middlesex, *to wit*, The jury between *R.* Jurata. *R.* plaintiff, and *C. L.* late of the parish of *St. John Baptist* in the precinct of the *Saroy* in the *Strand* in the county aforesaid, gent. in a plea of trespass and ejection of the farm, is respited here until on the morrow of the *Holy Trinity*, unless Sir *John Eardley Wilmot*, knt. chief justice of our lord the king of the bench here assigned, by form of the statute in that case made and provided, on *Tuesday* the 8th day of *May* at *Westminster* in the great hall of pleas there, commonly called *Westminster-hall*, in the said county, shall first come for the default of the jury, because none came, therefore let the sheriff have

have the bodies of the several persons mentioned in the panel to the writ of *Habeas corpora juratorum* annexed; and be it ~~known~~
Le sciendum. that the justices thereupon here in ~~the~~
 the same term delivered a writ to the deputy of the sheriff of the county aforesaid, to be executed according to due form of law, &c.

Postea.

Afterwards the day and place within contained, before Sir William De Grey, knt. chief justice within written, having ~~John~~
Higbam, gent. for his associate, by force of the statute, and so forth, cometh the within named *R. R.* by his attorney within contained, and the within written *C. L.* altho' solemnly called, cometh not; therefore let the jury, whereof mention is within made, be taken against him by default; and the jurors of the said jury being called come, who to speak the truth of the within contained being elected, tried and sworn, say upon their oath, that the said *C.* is guilty of the trespasss and ejectment within mentioned, as the said *R. R.* within complaineth against him; and they assess the damages of him the said *R.* on occasion thereof, over and above the costs and charges which he has been put to about his suit in this behalf, to 1*s.* and for the said costs and charges to 20*s.* Therefore, &c.

			<i>l.</i>	<i>s.</i>	<i>d.</i>
Damages	—	—	0	1	0
Costs	—	—	1	0	0
Increase	—	—	15	15	8
			<hr/>		
In all	—	—	16	16	8

Signed 30 May 1777.

It

It is not usual to grant new trials in ejectment, where the verdict is for the defendant, *Of new trials in ejectment.* but the plaintiff may bring a new ejectment, and no other disadvantage happens to him. But where the verdict is for the plaintiff it is otherwise, and new trials have been granted; for there the consequence of not granting a new trial is the alteration of the possession of the premises in question. See *Barnes* 440.

Where a verdict in ejectment is for the defendant, or the plaintiff becomes nonsuited upon evidence, a *Ca. sa.* must be made out against the plaintiff, and shewed to his lessor, and the costs must be demanded thereupon of the lessor. See *Barnes* 182. *Of costs in ejectment.*

Where the plaintiff is nonsuited by reason of the defendant's not confessing lease, entry and ouster, the costs are taxed on the rule by consent, and judgment signed against the casual ejector. *Barnes* 182.

Rule to tax plaintiff his costs in ejectment, against one of the defendants, who did not appear on the trial, and confess lease, entry and ouster. *Barnes* 149.

Proceedings stayed, till good plaintiff be named, or security to be approved by prothonotary be given by infant lessor, for securing costs to defendant, in case of a nonsuit or verdict for him. *Barnes* 183. Lord chief justice *Willes* said, he thought the court should extend the rule for making a good plaintiff, or giving security for defendant's

tion is delivered to the tenant in possession.
Barnes 172.

Tenant secreting declaration in ejectment forfeits three years improved rent.

A tenant, to whom a declaration in ejectment shall be delivered for any lands, tenements or hereditaments, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack-rent of the premises so holden in possession of such tenant, to the person of whom he holds.
Stat. 11 Geo. 2. c. 19.

Landlord empowered to make himself defendant.

The court where such ejectment shall be brought may suffer the landlord to make himself defendant, by joining with the tenant to whom such declaration shall be delivered, in case he shall appear; but in case such tenant shall refuse to appear, judgment shall be signed against the casual ejector for want of such appearance; but if the landlord of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself, and consent to enter into the like rule, that by the course of the court the tenant in possession, in case he had appeared, ought to have done, then the court shall permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein. *Same statute.* The word *landlord* means not every person claiming (d) title, but

(d) Court refused to make a person, who claimed title, defendant, instead of the late tenant, who had quitted the possession. *Barnes 195, ad eallem.*

a person who is in some degree of possession, as receiving rent, &c. *Barnes* 193, 194.

Motion that landlord might be made defendant without tenant in possession, who refused to appear, denied, but common rule granted to add landlord to tenant. *Barnes* 172.

Motion that tenant in possession might shew cause why he should not (e) appear and defend his title, his landlord having tendered him an indemnity, refused, but enlarged the time for appearance. *Barnes* 173.

In cases where landlord is permitted to defend without tenant, reason of judgment against casual ejector, by *Stat. 2 Geo. 2. chap. 19.* is, that under it, after end of suit, plaintiff may obtain (f) possession of premises sued for, which he could not do by virtue of a judgment against a person out of possession. *Barnes* 208.

Landlord by *Stat. 2 Geo. 2. chap. 19.* is to enter into common rule by consent, before that statute, he might have been added defendant; he is to be considered in all respects, in same case as tenant in possession. *Barnes* 187.

(e) Motion for landlord to defend cannot properly be made till after judgment signed against the casual ejector, and affidavit produced of the tenant's refusal or neglect to appear. *Barnes* 179.

(f) But when a writ of error is brought, there is not the least reason to give plaintiff leave to take possession, till after determination in error. *Barnes* 208.

Landlord moved to add himself to tenants; they not entering appearance, plaintiff signed judgment against casual ejector; landlord afterwards, without disclosing to court, what had been previously done, applied for conditional rule, as matter of course, and by virtue thereof appeared alone without tenants; court gave leave to take out execution on the (g) judgment. *Barnes* 186, 187.

Rules for leave to take out execution by plaintiff against casual ejector, after verdict against landlord made defendant instead of tenant in possession pursuant to *Stat. 2 Geo. 2. chap. 19.* be absolute in first instance, and not to shew cause. *Barnes* 185. in *calcem*.

If the plaintiff is nonsuited by default of the landlord's not appearing to confess lease, entry, &c. or obtains a verdict, the court, on producing the *posse*, will make an absolute rule to take out execution against the casual ejector, and not a rule to shew cause. *Barnes* 182, 183.

Rule *nisi* for setting aside *Non pros*, for not confessing lease, entry and ouster, ordered by court, on payment of costs, though regular; defendant did not confess lease, &c. because of a material variance between the

(g) Plaintiff offered to waive his judgment, if landlord, who resided at *Jamaica*, would give his security for the costs, but his council would not consent. *Barnes* 187.

issue and record; court observed, that confession would not have been a defence, and defendant might afterwards have moved to set aside the verdict for the variance. *Barnes* 175.

Writ of restitution ordered for late tenants in possession; judgment being set aside for irregularity, possession ordered to be restored, and lessor of plaintiff, who held the possession, absconding, rule became ineffectual. *Barnes* 178.

Lessor of plaintiff and his attorney prevailing upon tenant in possession, by undue practices, to deliver possession of the premises, (which defendant claimed as tenant's landlord) pending the suit, after rule obtained by defendant to be at liberty to defend his title, pursuant to *Stat. 2 Geo. 2. chap. 19.* (tenant refusing to appear) and entering into common consent rule, held no contempt of the court, but a fraud, which (b) ought to be prevented, and is not remedied by said act. *Barnes* 180.

Hab. (i) corp. is the proper process to remove a plaintiff from the mayor's court in London, and not a *certiorari*. *Barnes* 421.

(b) Tenants should be bound not to change the possession. *Barnes* 180.

(i) Under which defendant must appear in this court, and enter into the common rule, and plaintiff must declare *de novo*. *Barnes* 421.

Habere facias
possessionem.

GEORGE the third, &c. To, &c. greeting. Whereas J. M. lately in our court, before our justices at Westminster, by the consideration of the said court, recovered

<i>Signing</i>	1	4	<i>s. d.</i>	his term yet to come of and in the manor
<i>Scal</i>	0	7		of S. with the appurtenances, and 10 messu-
				ages, 500 acres of land, 100 acres of mea-
	1	11		dow, 300 acres of pasture, with the appur-

tenances in S. in your county, against L. C. late of, &c. which J. C. gentleman, on the 1st day of October in the ——— year of our reign, demised to the said J. M. to hold and enjoy to the said J. M. and his assigns, from the feast of Saint Michael the archangel then last past, unto the full end and term of seven years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said L. put out and amoved the said J. M. from his possession, and ejected him from his said farm: Therefore we command you, that you cause the said J. M. to have his possession of his said term yet to come of and in the said manor and tenements aforelaid, with the appurtenances; and how you shall execute this our precept make appear to our justices at Westminster in eight days of the Purification of the blessed Mary; and have there this writ. Witness, &c.

if on a double or treble demise, you pay 8d. for each demise after the first.

Habere facias
possessionem,
and a Fi. fa.'

GEORGE the third, &c. To, &c. greeting. Whereas W. D. gentleman, lately in our court before our justices at Westminster, by the consideration of the said court recovered against S. F. late of, &c. his term yet

to

to come of and in one messuage and 14 acres of land, with the appurtenances, in *L.* in your county, which *S. J.* and *E. J.* on the first day of *October* in the year of our Lord —, at *L.* aforesaid, demised to the said *W.* to hold and enjoy the said tenements with the appurtenances, to him and his assigns, from the ——— day of — then last past, unto the end and term of three years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said *S.* put out and amoved the said *W.* from his possession, and ejected him from his said farm, therefore we command you, that without delay you cause the said *W.* to have his possession of his term aforesaid of and in the said messuage and tenements, with the appurtenances; and how you shall execute this our precept make appear to our justices at *Westminster* in eight days of the Purification of the blessed *Mary*. We also command you, that of the goods and chattels of the said *S.* in your bailiwick, you cause to be made eleven pounds, which were adjudged to the said *W.* in our said court for his damages, which he had by reason of the trespass and ejectment aforesaid, and have that money before our justices at *Westminster* at the said time, to render to the said *W.* for his damages aforesaid, whereof the said *S.* is convicted; and have there this writ. Witness, &c.

GEORGE the third, &c. To, &c. greet-Habere facias
ing. Whereas *A. G.* lately in our court be-
B b 3 fore

after a Sci.
fa.'

fore our justices at *Westminster*, by the consideration of the said court recovered his term of and in one messuage, 28 acres of land, five acres of meadow, and 17 acres of pasture, with the appurtenances, in C. in your county, against D. B. late of, &c. merchant, which W. N. on the 1st day of *April* in the ——— year of our reign, at C. aforesaid, demised to the said A. to hold and enjoy to him and his assigns from the feast of the Annunciation of the blessed virgin *Mary* then last past, unto the end and term of three years thence next ensuing, and fully to be complete and ended, which is not yet past; and whereupon the said D. put out and amoved the said A. from his possession, and ejected him from his said farm therein, which said A. after the said judgment was given, died, after whose death it is considered in our said court, that C. W. and R. S. executors of the testament and last will of the said A. have execution against the said D. of the term aforesaid yet to come of and in the said tenements with the appurtenances, by the default of the said D. We therefore command you, that without delay you cause the said C. and R. to have possession of the said term yet to come of and in the said tenements, with the appurtenances: And how you shall execute this our precept make appear to our justices at *Westminster* from the day of the Holy *Trinity* in three weeks; and have there this writ. Witnesses, &c.

Sci. fa.'

Rule *Nisi*, why writ of *Hab. Fac. Poss.* should not be set aside, and possession restored,

stored, &c. discharged; it appearing, that after plaintiff had obtained judgment, defendant brought writ of error, which was allowed, but entered into no recognizance, nor put in any (k) bail thereon, plaintiff previous to his procuring (l) costs to be taxed on the final judgment, for want of defendant's entering into recognizance, required by (m) *stat. 16 & 17 Car. II. chap. 8.* or bail within four days, took out writ of *Hab. Fac. Poss.* and by virtue thereof, took possession of premisses late in question, which the court held to be regular. *Barnes 212.*

(k) Writ of error is no *Supersedeas* without bail, which judge would have taken, if applied to. *Barnes 212.*

(l) Defendant should have applied to stay execution, and the court would have obliged plaintiff to have procured his costs to be taxed, without which the measure or quantum of the recognizance could not be ascertained. *Barnes 212.*

(m) See 2 *Ventr. 170.*

COSTS for DEFENDANT in EJECT- MENT.

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Instructions	0	0	0	0	2	2	0	4	4
Appearance	0	2	0	0	3	8	0	5	4
Searching if judgment moved for	0	0	0	0	1	8	0	3	4
Copy declaration fol. 7	0	0	0	0	1	8	0	3	4
Common rule	0	0	0	0	0	6	0	1	0
General issue and rule	0	0	0	0	2	2	0	4	4
Paid for issue per sheet be- sides duty and warrant	0	0	4	0	0	4	0	0	4
Halt consent rule	0	2	6	0	2	6	0	2	6
Copy issue fo. 9	0	0	0	0	1	6	0	3	0
Instructions for brief	0	0	0	0	3	4	0	6	8
Term fee	0	0	0	0	2	6	0	5	0
Letters	0	0	0	0	1	0	0	2	0

Of

Of writs of Scire facias.

A *Scire facias* is a judicial writ, and properly lies where one has recovered debt or damages, and has not sued out execution within the year and a day. It also lies on a recognizance of bail; and in many other cases it is called a *Scire facias*, because of the words of the writ to the sheriff, viz. *Quod Scire facias præfat. D. the defendant, quod sit coram, &c. c'tenturus si quid pro se habeat aut dicere sciat quare, &c.* so as by this writ it appears that the defendant is to be warned to plead any matter in bar of execution; and therefore although it be a judicial writ, yet, because the defendant may plead thereto, this *Scire facias* in law is accounted in nature of an action.

GEORGE the third, by the grace of Sci. fa.' after God, of Great Britain, France, and Ireland, a year and a king, defender of the faith, &c. To the day.
 Sheriff of Middlesex, greeting. Whereas J. Duty s. d.
 R. lately in our court, to wit, in the term Signing 2 0
 of St. Hilary in the — year of our reign, Seal 1 4
 before Sir John Eardley Wilmot, knight, and 0 7
 his companions, then our justices of the bench at Westminster, by the consideration of the same court recovered against H. N. late of, &c. otherwise called, &c. as well a certain debt of forty pounds as sixty-three shillings, which were adjudged to the said J. R. in our same court for his damages which he had by occasion of the detaining that debt, whereof
 2 the

the said *H.* is convicted, as by the record and proceedings thereof remaining in our same court before our justices at *Westminster* manifestly appeareth; yet execution of the said judgment still remaineth to be made, as on the information of the said *J. J.* we have been given to understand; and because we are willing that those things which in our same court are rightly acted be demanded by a due execution, we command you, that, by good and lawful men of your bailiwick, you make known to the said *H.* that he be before our justices at *Westminster*, on [the return] to shew if any thing he hath or knoweth to say for himself, why the said *J.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if it shall seem expedient to him; and have there the names of them, by whom you shall make known to him, and this writ. Witnel's Sir *William De Grey*, knight, at *Westminster*, the ——— day of, &c.

Note; If the plaintiff has within the year and day sued out an execution, got it returned and filed, and continued it on the roll by *Vic' non misit breve*, it is sufficient to warrant an execution after the year and day.

In this case one *Scire facias*, with a *Nihil* returned, is sufficient.

This writ is to be signed by the prothonotary; then it is to be delivered to the sheriff, and when returned, it must be entered on the protho-

prothonotary's remembrance, and a rule must be given; after the rule is out, you sign and docket the judgment, and enter it up in manner following:

Middlesex, *to wit*, The sheriff was com-
manded, whereas J. R. lately in the court
of our lord the now king, *to wit*, in the term
of St. Hilary in the twelfth year of the reign
of our said lord the king, before Sir Eardley
Wilmot, knight, and his companions, then
justices of our said lord the king of the
bench here, *to wit*, at *Westminster*, by the
consideration of the same court, recovered
against H. N. late of, &c. otherwise called,
&c. as well a certain debt of 40 l. as 63 s.
which was adjudged to the said J. in the
same court for his damages which he had by
occasion of the detaining that debt whereof
the said H. is convicted, as by the record and
proceedings thereof remaining in the same
court of our said lord the now king here, *to
wit*, at *Westminster* aforesaid, manifestly ap-
peareth; Yet execution of the said judgment
still remaineth to be made, as on the infor-
mation of the said J. the king hath been
given to understand; and because, &c. That
by good, &c. he make known to the said
H. that he be here at *Westminster* at this day,
to wit, [the return] to shew if any thing,
&c. why the said J. ought not to have exe-
cution against him for the debt and damages
aforesaid, according to the form of the said
recovery, if, &c. And now here at this
day came the said J. by L. R. his attorney,
and

Entry of judg-
ment on a
Scire facias.

and offered himself on the fourth day against the said *H.* in the plea aforesaid, and he being solemnly demanded came not; and the sheriff now sendeth, that he hath nothing, &c. nor is he found, &c. It is therefore considered that the said *J.* have execution against the said *H.* for the debt and damages aforesaid, by default of the said *H.* &c.

			<i>s.</i>	<i>d.</i>
Duty	-----	-----	2	0
Signing writ	-----	-----	1	4
Seal	-----	-----	0	7
Return	-----	-----	1	0
Rule and duty	-----	-----	1	6
Signing judgment	-----	-----	2	0
Filing warrant	-----	-----	0	4
			<hr/>	
			8	9

Scire facias in debt for an administrator. *GEORGE* the third, &c. To, &c. Whereas *H. S.* lately in our court, *to wit*, in the term of *St. Hilary* in the 13th year of our reign, before *Sir John Eardley Wilmer*, *knt.* and his companions, then our justices of the bench at *Westminster*, by the consideration of the same court, recovered against *N. C.* late of, &c. otherwise called, &c. as well a certain debt of 200*l.* as 63*s.* which in our said court were adjudged to the said *H.* for his damages which he had by occasion of the detaining that debt whereof the said *N.* is convicted, as by the record and proceedings thereof remaining in our said court manifestly appeareth; *yet* execution of the said judgment still remaineth to be made, and the said *H.* is dead,

dead, as on the information of *W. S.* widow, administratrix of all the goods and chattels which were of the said *H.* at the time of his death, we have been given to understand; and because we are willing that those things which in our said court have been rightly acted should be demanded by a due execution, we command you, that by good and lawful men of your bailiwick you make known to the said *N.* that he be before our justices at *Westminster* on [the return] to shew if any thing he hath or knoweth to say for himself, why the said *W.* ought not to have execution against him, *Ec. ut antea, fol. 376.*

——to wit, The sheriff was commanded, *Entry of a Scd- [ut antea, fol. 377.]* yet execution still remaineth to be made, and the said *W.* is dead, as on the information of *R. W.* executor of the testament of the said *W.* the king hath been informed; and because, *Ec. by good, Ec. make known to the said B. [ut antea, fol. 377, 378.]* And now here at this day came the said *R.* by *J. S.* his attorney, and offered himself on the 4th day against the said *B.* in the plea aforesaid, and the said *B.* being solemnly demanded came not; and the sheriff now returneth, that he hath nothing, *Ec. nor is he found, Ec.* And upon this the said *R.* bringeth here into court the letters testamentary of the said *W.* by which it sufficiently appeareth to the court here, that the said *R.* is executor of the testament of the said *W.* and thereof hath the administration, *Ec.* and he prayeth execution against the

re facias in debt by an executor.
Nihil return'd.
Proferet.

Judgment.

the said *B.* of the debt and damages aforesaid in form aforesaid to be adjudged to him, &c. It is therefore considered that the said *R.* have execution against the said *B.* of the debt and damages aforesaid, by the default of the said *B.* &c.

Entry of a Scire facias in case against an administrator.

——to wit, The sheriff was commanded, whereas *R. G.* lately in the court of our lord the king here, to wit, in the term of *St. Hilary* in the first year of his reign, before *Sir John Eardley Wilmot*, *knt.* and his companions, then justices of our lord the king of the bench here, to wit, at *Westminster*, by the consideration of the same court, recovered against *P. G.* late of *Southwark* in the county of *Surrey*, dyer, 18*l.* which to the said *R.* in the same court of our lord the king now here, were adjudged for his damages, which he had by occasion of the not performing certain promises and undertakings made by the said *P.* in his life-time to the said *R.* whereof the said *P.* was convicted, as by the record and proceedings thereof remaining in the same court of our lord the king now here, to wit, at *Westminster* aforesaid, manifestly appeareth; Yet execution of the said judgment still remaineth to be made, and the said *P.* is dead, as on the information of the said *R.* the king hath been informed; and because, &c. that by good, &c. he should make known to *A. G.* widow, administratrix (*n*) of the goods and

(*n*) Held upon argument of demurrer, that the calling defendant administrator in the declaration is a sufficient averment of his being so, without setting out, that administration was committed to him. *Barnes* 159.

chattels which were of the said *P.* who died intestate, &c. that she be here at this day, *to wit*, on the morrow of *All Souls*, to shew if any thing, &c. why the said *R.* ought not to have execution against her of the damages aforesaid, of the goods and chattels which were of the said *P.* at the time of his death, being in the hands of the said *A.* to be administered, if she hath so much in her hands, according to the form of the said recovery, if, &c. And now here at this day came the said *R.* by *L. R.* his attorney, and offered himself on the 4th day against the said *A.* in the plea aforesaid, and she being solemnly demanded came not; and the sheriff now returneth that she hath nothing, &c. *Return Nihil.* nor is she found, &c. Therefore, *as before*, the sheriff was commanded, that by good, &c. *Alias sci. fa.* he should make known to the said *A.* that she should be here at this day, *to wit*, on the [*the return*] to shew in form aforesaid; at which day came the said *R.* by his said attorney; and hereupon the said *A.* on the 4th day of the plea being solemnly demanded came not; and the sheriff, *as before*, returneth that she hath nothing, &c. *Return Nihil.* nor is she found, &c. and upon this the said *R.* saith that after the judgment aforesaid rendered the said *P.* died intestate, and that administration of the goods and chattels which were of the said *P.* at the time of his death, after the death of the said *P.* was committed to the said *A.* at *Southwark* aforesaid; and the said *R.* prayeth execution against the said *A.* of the damages aforesaid, of the goods and chattels

Judgment.

chattels which were of the said *P.* at the time of his death, being in the hands of the said *A.* to be administered, if she hath so much thereof in her hands. It is therefore considered that the said *R.* have execution against the said *A.* of the damages aforesaid, of the goods and chattels which were of the said *P.* at the time of his death in the hands of the said *A.* to be administered, if she hath so much thereof in her hands, &c. by the default of the said *A.* &c.

*Entry of a
Scire facias
in debt against
executors, and
two Nihilis re-
turned.*

London, *to wit*, The sheriffs were commanded, whereas *R. F.* [*as before, to*] *Yet* execution of the said judgment still remaineth to be made, and the said *T.* is dead, as on the information of the said *R.* the king has been informed; and because, &c. that by good, &c. they make known to *A. J.* widow, and *M. J.* executors of the testament of the said *T.* that they be here at this day, *to wit*, from the day of *Easter* in 15 days to shew if any thing, &c. why the said *R.* ought not to have execution against them of the debt and damages aforesaid, of the goods and chattels of the said *T. J.* at the time of his death, in their hands to be administered, according to the form of the said recovery, if, &c. And now here at this day came the said *R.* by *W. E.* his attorney; and the said *A.* and *M.* on the fourth day of the plea being solemnly demanded came not; and the sheriffs now return, that the said *A.* and *M.* have nothing, &c. nor are they found, &c. Therefore, *as before*, the sheriffs are commanded,

manded, that by good, &c. they make known to the said *A.* and *M.* that they be here from the day of *Easter* in five weeks to shew in form aforesaid; at which day here came as well the said *R.* by his attorney aforesaid, as the said *A.* and *M.* by *F. K.* their attorney; and the sheriffs now return that they have nothing, &c. nor are they found, &c. *ut antea.*

In case of the death of either party judgment must be revived by *Scire facias*. In case of the death of the defendant you must have a *Scire feci* or two *Nihil* return'd; but in case of the plaintiff's death one *Nihil* is sufficient.

In all actions in this court, if any plaintiff shall happen to die after any interlocutory judgment, and before final judgment, the action shall not abate if such action might be originally maintained by the executors or administrators of such plaintiff; and if the defendant die after interlocutory judgment, and before final judgment, the action shall not abate, if such action might be originally prosecuted against the executors or administrators of such defendant; and the plaintiff, or his executors or administrators shall have a *Scire facias* against the defendant, his executors or his administrators, to shew cause why damages in such action should not be assised and recovered; and if such defendant, &c. shall appear at the return of such writ, and not alledge matter sufficient to arrest the final judgment, or (being returned

warned, or upon two writs of *Scire facias* it be returned, that the defendant, &c. had nothing, &c.) shall make default, a writ of inquiry shall be awarded, which being executed and returned, final judgment shall be given. *Stat. 8 & 9 W. 3. c. 9. sect. 6, 15.*

A Scire facias where the plaintiff died after interlocutory judgment, and before final judgment. *GEORGE* the third, &c. To the sheriffs of *London*, greeting. Whereas *G. K.* in his life-time, lately in our court, *to wit*, in the term of *Easter* in the 7th year of our reign, before Sir *Joh. Everdell Wilmot*, knight, and his companions, then our justices of the bench at *Westminster*, by our writ had impleaded *M. G.* late of *London*, widow, declaring in the same plea against her, that

Recital of the interlocutory judgment. whereas the said *M.* [setting forth the whole declaration to] and thereof he brought suit, &c. And it was proceeded in our same court in such manner, that in the term of the holy *Trinity* in the 6th and 7th years of our reign, by the same court it was considered, that the aforesaid *G.* ought to have recovered his damages against the said *M.* occasioned by not performing the promises and undertakings aforesaid. But because it was not known what damages the said *G.* had sustained on occasion of not performing the promises and undertakings aforesaid;

And award of inquiry. therefore the sheriffs of *London* were commanded, that by the oath of good and lawful men of their bailiwick they should diligently inquire, what damages the said *G.* had sustained, as well on occasion of the not performing the promises and undertakings aforesaid.

aforesaid, as for his costs and charges by him about his suit in that behalf laid out; and the inquiry which the sheriffs should thereof make, they should make manifest to our justices at *Westminster* aforesaid, from the day of *St. Michael* in three weeks then next following, under the seal, &c. and the seals, &c. as by the record and process thereof remaining in our same court, *to wit*, at *Westminster* aforesaid, may plainly appear. The inquiry nevertheless of the damages aforesaid yet remaineth to be made, and the aforesaid *G.* at *London* aforesaid made his testament and last will in writing, and thereby constituted and appointed *E. K.* his wife sole executrix thereof; and afterwards, and after the judgment aforesaid given at *London* aforesaid died, after whose death the said *G.* proved the said testament in due form of law, and took the burthen of the execution of that testament upon her, as by the letters testamentary thereof here in court by the said *E.* produced to our justices sufficiently appeareth; and because we will those things which in our same court are rightly acted be duly carried into execution, we command you, that by good and lawful men of your bailiwick you make known to the said *M.* that she be before our justices at *Westminster* on the morrow of *St. Martin*, to shew if she hath, or knoweth any thing to say for herself, why the damages aforesaid by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, should not be assessed

Death of plaintiff, executrix proves his will.

Profert.

Sci. fa.

assessed and adjudged to the said *E.* according to the form of the statute in this case lately made and provided, if to her it shall seem expedient; and have you there the names of them by whom you shall make it known to her, and this writ. Witness Sir, *John Eardley Wilmet*, knight, at *Westminster*, the 20th day of *October* in the 7th year of our reign.

If a *Nihil* be returned, according to the above statute, an *Alias scire facias* must issue; you must enter them *verbatim* in the prothonotary's remembrance roll, and give a rule.

*Entry of the
above Scire
facias.*

*First Scire fa-
cias roll.*

London, *to wit*, The sheriffs were commanded, whereas *G. K.* lately in the court of our lord the now king, *to wit*, in *Easter* term the 7th year of the reign of our said lord the king, before Sir *John Eardley Wilmet* knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *Westminster*, by the writ of our said lord the king, had impleaded *M. G.* late of *London*, widow, declaring in the same plea against her, that whereas [*setting forth the whole declaration, as in the Sci. fa.*] And it was proceeded in the same court of our said lord the king in such manner, that in the term of the holy *Trinity* in the 6th and 7th years of the reign of our said lord the king, by the same court it was considered, that the afore-said *G.* ought to have recovered his damages against the said *M.* occasioned by not performing the promises and undertakings afore-said :

said: But because its was not known what damages the said *G.* had sustained on occasion of not performing the said promises and undertakings, therefore the then sheriffs were commanded, that by the oath of good and lawful men of their bailiwick they should diligently inquire what damages the said *G.* had sustained, as well on occasion of the not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in that behalf laid out; and the inquiry which the sheriffs should thereof make, they should make manifest to the justices of our said lord the king, *to wit*, at *Westminster* aforesaid, from the day of Saint Michael in three weeks then next following, under the seal, &c. and the seals, &c. as by the record, and process thereof in the same court of our said lord the king here, *to wit*, at *Westminster* aforesaid remaineth very plainly appear. The inquiry nevertheless of the damages aforesaid yet remaineth to be made, and the said *G.* at *London* aforesaid made his testament and last will, and thereby constituted and appointed *F. K.* his wife sole executrix thereof, and after and after the judgment aforesaid given at *Westminster* aforesaid, did, after whose death the said *E.* proved the said testament in due form of law, and took the burden of the execution of that testament upon her, as by the letters testamentary thereof here, *to wit*, at *Westminster* aforesaid, by the said *E.* produced to the said justices of our said lord the king sufficiently appeareth. And because, &c. that

by good, &c. the said sheriffs should make known to the said *M.* that he should be here at this day, *to wit*, on the morrow of *St. Martin*, to shew if any thing, &c. why the damages aforesaid, by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, should not be assessed and adjudged to the said *E.* according to the form of the statute in this case lately made and provided, *if*, &c. And now here at this day, *to wit*, on the morrow of *St. Martin* aforesaid, cometh the aforesaid *E.* by *W. T.* her attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid; and the said *M.* being solemnly called cometh not; and the now sheriffs do

Return Nihil.

return, that she hath nothing, &c. nor is to be found, &c. Therefore, as before, the sheriffs are commanded, that by good, &c. they make known to the said *M.* that she be here in eight days of *St. Hilary*, to shew in manner aforesaid.

Second Scire facias roll.

London, *to wit*, Heretofore, as it appeareth in this same term, in the roll it is thus contained, *to wit*, London, *to wit*, The sheriffs were commanded [*the last entry verbatim, and then go on.*] At which day here cometh the said *E.* by *W. T.* her said attorney, and hath offered herself the fourth day against the said *M.* in the plea aforesaid; and the said *M.* being solemnly called cometh not; and the sheriffs, as be-

Return Nihil. fore, do return, that she hath nothing, &c. nor

nor is to be found, &c. And hereupon the said *E.* prayeth, that the damages aforesaid, by him the said *G.* on occasion of not performing the promises and undertakings aforesaid, in the action aforesaid sustained, may be assessed and adjudged unto her: There-^{Judgment that}fore it is considered, that the damages afore-^{damages be}said, by him the said *G.* on occasion of not^{assessed.} performing the promises and undertakings aforesaid sustained, be assessed and adjudged unto the said *E.* according to the form of the statute in that case made and provided, by default; and because it is still unknown what damages the said *G.* hath sustained by reason of the premises aforesaid; therefore, as before, the sheriffs are commanded, that by the oath of good and lawful men of their bailwic, they diligently inquire what damages the said *G.* hath sustained, as well by reason of the said premises, as for his costs and charges by him laid out about his suit in that behalf; and the inquisition which they shall thereupon make, that they make manifest to the justices of the lord the king here, to wit; at *Westminster* aforesaid, in eight days of the purification of the blessed *Mary*, under the seal, &c. and the seals, &c. At which day here cometh the said *E.* by her^{Return of} said attorney, and the sheriffs, to wit, Sir^{inquiry.} *George Chamion*, knight, and *Robert Cater*, esq; now return here a certain inquisition taken before them at *Guildhall* in the parish of *St. Lawrence Jewry* in the ward of *Cheap* of the same city, on the 4th day of *February* last past. by the oath of 12, &c. by which

*Judgment
signed 17 Apr.
1737.*

it is found, that the said *G.* by reason of the premises sustained damages, besides his costs laid out by him about his suit in that behalf to 105*l.* and for his costs and charges aforesaid to 27*s.* 4*d.* Therefore it is considered, that the said *E. devecatrix* aforesaid, do recover against the said *M.* the said damages to 100*l.* 7*s.* 4*d.* found by the said inquisition in manner aforesaid; and also 11*l.* 2*s.* 8*d.* adjudged by the court here to the said *E.* at her request, for the increase of the costs and charges aforesaid; which said damages amount in the whole to 117*l.* 10*s.* And the said *M.* in mercy, &c. — *It. 2. G. 2. R. 341.*

Mercy.

*Entry of Scire
facias against
bail.*

*Note; the first
writ is made
out by the filacer.*

*The second
Sci. fac. is
signed by the
prothonotary.*

Middlesex, *to wit*, The sheriff was commanded, whereas *J. H. of, &c.* and *S. D. of, &c.* lately, that is to say, in *Michaelmas* term in the 7th year of the reign of our sovereign lord the now king before Sir *John Hardly Wilmot*, knt. and his companions, then our said lord the king's justices of the bench at *Westminster*, came in their proper persons, and acknowledged, and each of them by himself acknowledged, to owe to *H. D.* the sum of 110*l.* which said sum of 110*l.* they the said *J.* and *S.* for themselves and their heirs willed and granted, and each of them, for himself and his heirs, willed and granted to be made of their and each of their land, and chattels, and to be levied to the use and behoof of the said *H.* And whereas *J. H. of, &c.* lately, that is to say, in the time *Michaelmas* term in the 7th year aforesaid, in the said

said court of our said lord the king, before Sir *John Eardley Wilmot*, knt. and his companions, then our said lord the king's justices of the bench at *Westminster*, came in his proper person, and acknowledged himself to owe to the said *H. D.* the sum of 220*l.* which said sum of 220*l.* the said *J. H.* for himself and his heirs, willed and granted to be made of his lands and chattels, and to be levied *pro* the use and behoof of the said *H.* after this condition, that if judgment should happen to be given for the said *H.* against the said *J. H.* in the same court, in a simple plea of debt upon demand, 124*l.* prosecuted in the same court by the said *H.* against the said *J. H.* that then the said *J. H.* would satisfy the said *H.* his said debt and damages on occasion of detaining the said debt to be adjudged to the said *H.* against the said *J. H.* in the same court in the plea aforesaid, or render his body on that occasion to the prison of our said lord the king of the *Fleet*; and although the said *H.* afterwards, that is to say, in the same *Michaelmas* term in the said 7th year of the reign of our said lord the king, in the same court, before the said Sir *John Eardley Wilmot*, knt. and his companions, then our said lord the king's justices of the bench aforesaid, by the judgment and consideration of the same court, recovered against the said *J. H.* as well his said debt of 124*l.* as 16*l.* 10*s.* which were adjudged to the said *H.* in the same court for his damages, which he had on occasion of detaining that debt, whereof
the

the said *J. H.* is convicted, as by the record and proceedings thereof now remaining in the same court at *Westminster* aforesaid is manifestly apparent. Nevertheless the said *J. H.* hath not yet satisfied the said *H.* for his debt and damages aforesaid, nor rendered his body on that occasion to the said prison of the *Fleet*, according to the term of the said recognizance, as our said lord the king has received information from the said *H.* And because, &c. that by good, &c. he should make known to the said *J. H.* *J. H.* and *S.* that they be here at this day, that is to say, on the morrow of the holy *Trinity*, to shew if any thing, &c. that is to say, the said *J. H.* why the said 110*l.* by him in form acknowledged should not be made of his lands and chattels; and the said *S.* why the said 110*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and the said *J. H.* why the said 220*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and levied to the use and behoof of the said *H.* according to the form of the said recognizance, if, &c. And now at this day the said *H.* cometh here by *L. R.* his attorney, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea aforesaid; and they, though solemnly called, came not; and the sheriff now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any of them found, &c.

Return Nihil.

Aljas awarded. Therefore, as before, the sheriff was commanded,

manded, that by good, &c. he should make known to the said *J. H. S.* and *J. H.* that they be here from the day of the holy *Trinity* in three weeks, to shew in form aforesaid; at which day the said *H.* cometh here by his attorney aforesaid, and offered himself on the fourth day against the said *J. H. S.* and *J. H.* in the plea aforesaid, and they, though solemnly called, come not; and the sheriff, as before, now returneth, that the said *J. H. S.* and *J. H.* have not, nor hath any one of them any thing, &c. nor are they, nor is any one of them found, &c. And thereupon the said *H.* prayeth execution against the said *J. H. S.* and *J. H.* to wit, against the said *J. H.* of the said 110*l.* by him in form aforesaid acknowledged, and against the said *S.* of the said 110*l.* by him in form aforesaid acknowledged, and against the said *J. H.* of the said 220*l.* by him in form aforesaid acknowledged, according to the form of the recognizance, to be adjudged to him, &c. Therefore it is considered, *Judgment.* That the said *H.* have execution against the said *J. H. S.* and *J. H.* that is to say, against the said *J. H.* of the said 110*l.* by him in form aforesaid acknowledged; and against the said *S.* of the said 110*l.* by him in form aforesaid acknowledged; and against the said *J. H.* of the said 220*l.* by him in form aforesaid acknowledged, by default, &c.

GEORGE, &c. To the sheriff of *Mid.* *Sci. fa. against*
desex, greeting. Whereas *S. N.* of the city *bail on a Ho-*
of *Coventry* in the county of the same city, *beas corpus*
cordwainer, and *J. S.* of the same city in *upon a recog-*
the before a com- *nizance taken*

*missioner, de-
fendant in per-
son.*

Stat. 4 W. &
M. c. 4.

the county of the same city, farrier, hereto-
fore, *to wit*, on the fourth day of May in
the ——— year, &c. before S. W. esq; one
of the commissioners by our justices at *Hes-*
tinger appointed, according to the form of
the statute in this case lately made and pro-
vided, became bail, and each of them be-
came bail for J. F. in the sum of 50*l*. And
whereas the said J. F. on the same 4th day
of May in the ——— year of, &c. aforesaid,
before the same commissioner acknowledged,
that he owed to B. C. the sum of 100*l*.
Which said sum of 50*l*. the said S. and Y.
acknowledged, and each of them acknow-
ledged to be made of their, and each of
their lands and chattels; and which said sum
of 100*l*. the said J. S. acknowledged to be
made of his lands and chattels, and levied
to the use and behoof of the said B. upon
this condition, that the said J. F. should ap-
pear in our court before our justices at *Hes-*
tinger, at the suit of the said B. in a cert in
plea of trespass and assault to the damage of
50*l*. And if in our same court judgment
should happen to be given in the said plea
for the said B. against the said J. F. then the
said J. F. should satisfy all the damages which
should be adjudged to the said B. in our same
court in the plea aforesaid, or render his
body on that occasion to the prison of the
Fleet, as by the record and proceedings
thereof remaining in our same court mani-
festly appeareth. And although the said B.
in the term of *Easter* in the ——— year of,
&c. before Sir —, knight, and his com-
panions,

panions, our justices of the bench at *Westminster*, by the consideration of the same court recovered against the said *J. F.* 19*l.* which in our same court were adjudged to the said *B.* for his damages which he had by occasion of the said trespass and assault whereof the said *J. F.* is convicted, as by the record and proceedings thereof in our same court also remaining manifestly appeareth; But the said *J. F.* hath not satisfied the said damages to the said *B.* nor rendered his body on that occasion to the said prison of the *Shert*, according to the form of the said recognizance, as from the information of the said *B.* we have been given to understand. And because we will that those things which in our said court are rightly acted and acknowledged, be brought to a due execution, we command you, that by good and lawful men of your bailwic you make known to the said *S. J. S.* and *J. F.* that they be before our justices at *Westminster* on [the return] to shew if any thing they have, or knew to say for themselves, *to wit*, to the said *S.* why the said 50*l.* by him in form aforesaid acknowledged ought not to be made of his lands and chattels; to the said *J. S.* why the said 50*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels; and to the said *J. T.* why the said 100*l.* by him in form aforesaid acknowledged should not be made of his lands and chattels, and be levied to the use and behoof of the said *B.* according to the form of the said recognizance, if it shall seem expedient to him; and

have

3.

have there the names of them by whom you shall make known to them, and this writ. Witness, &c.

Intrat. Scire fieri & inquit. *Arara of F. fa. in acct for executors against an executor.*

Cambridge, *to wit*, The sheriff was commanded, that of the goods and chattels which were of *Henry Cromwell*, esq; deceased, lately called *Henry Cromwell* of *Wicken* in the county of *Cambridge*, esq; in the hands of *Elizabeth Cromwell* late of *Spunzy* in the county aforesaid, widow, executrix of the testament of the said *Henry* to be administered, being in his bailwic, he should cause to be made as well a certain debt of 200*l.* which *Christopher Wynne*, esq; and *Sarah* his wife, *Thomas Percival*, gentleman, and *Mary* his wife, and *Thomas Balls*, gentleman, which said *Sarah*, *Mary*, and *Thomas Balls*, were executors of the testament of *George Balls*, gentleman, deceased, in the court of our lord *Charles* the second, late king of *England*, before the justices of the said late king at *Westminster*, recovered against the said *Elizabeth*, as 40*s.* which in the same court of the said late king were adjudged to the same *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for their damages which they had by occasion of the detaining that debt, to be levied of the same goods and chattels, if the said *Elizabeth* had so much thereof in her hands to be administered; and if she had not, then the said damages to be levied of the proper goods and chattels of the said *Elizabeth*; and that he should have that money here from the day of the holy *Trinity* in three weeks, to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*,

Debenis testatoris si, &c.

Si non &c.
Danna ce bonis propriis.

Mary, and Thomas, for the debt and damages aforesaid, whereof the said *Elizabeth* is convicted. And now here at this day came the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, by *Richard Puplet* their attorney; and the sheriff now returneth, that he, by virtue of the said writ to him directed, had caused the said 40s. being the damages aforesaid, to be made of the proper goods and chattels of the said *Elizabeth*, which said 40s. he hath here at this day to render to the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, for the damages aforesaid; and the said sheriff further returneth to the justices here, that there are no goods or chattels in his bailiwick which were of the said *Henry*, in the hands of the said *Elizabeth* to be administered, whereof he could cause to be made the said debt and damages, or any part thereof; and because the said return is conceived to be made in delay of the execution of the said judgment as to the debt aforesaid; and it is testified in the same court of the king here, on the behalf of the said *Christopher* and *Sarah*, *Thomas* and *Mary*, and *Thomas*, that the said *Elizabeth* hath sold, cloined, wasted, converted and disposed to her own proper use divers goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, to the value of the debt aforesaid, to the intent that execution of the said debt might not be thereof made; and our said lord the king being unwilling that those

Return.

Damages levied de bonis propriis.

Nulla bona testatoris.

Devastavit suggested.

Fieri facias
pro debito
guarda.

Si debui me
vari non possunt
tunc si constet
per inquisitionem
quod
def. decessit.

Sci. fa.

Chis. E. tr.
662.

Nota of execution
Sci. fa. Inquir.

those things, which in the same court of the said late *Henry* were rightly acted and adjudged, should be rendered void by art or deceit; the where the sheriff is commanded, that of the *goods* and chattels which were of the said *Henry* at the time of his death in the hands of the said *Elizabeth* to be administered, being in his shire, he should cause to be levied the same debt, if it may be thereof levied, and have the money thereof levied here, on *Monday* to render to the said *Christopher* and *Sirab*, *Thomas* and *Mary*, and *Thomas*, for the same debt; and if the said debt cannot be levied in form aforesaid, then if it can appear to the same sheriff by inquisition on that behalf to be taken, upon the oath of good and lawful men of his bailiwick, or by any other method whereby he may be the better certified thereof, that the said *Elizabeth* hath sold, elomed, wasted or converted, and disposed to her own use, goods and chattels which were of the said *Henry* at the time of his death, and have come to the hands of the said *Elizabeth* to be administered, then by good, &c. he should make known to the said *Elizabeth*, that she be here at the time aforesaid, to shew, it, &c. why the said *Christopher* and *Sirab*, *Thomas* and *Mary*, and *Thomas*, ought not to have execution against her of the debt aforesaid, to be levied of the proper goods and chattels of the said *Elizabeth*, according to the form of the said recovery, if, &c.

Like notice must be given of executing a *Sci. fa. Inquir.* as is given of trial, or of executing

executing a writ of inquiry or damages,
Barnes 304. *Præst. Reg. C. P.* 379. *Rep.*
Et Cas. of Præst. C. P. 1.

In the Common Pleas.

Hilary——George the third.

Middlesex, **I**T was commanded to the she-
 to wit. **I**riff, Whereas *W. F.* esq; in the
 court of our sovereign lord George the third,
 king of *Great Britain*, &c. to wit, in *Easter*
 term in the seventh year of our reign, be-
 fore Sir *John Eardley Wilmot*, knight, and
 his companions, our justices of the bench at
Westminster, by the consideration of the said
 court had recovered against *C. M.* late of
Wiltshire in the county of *Middlesex*, esq;
 and the lady *E. M.* his wife, executrix of the
 testament and last will of *C. lord M.* her late
 husband, deceased, lately called *C. lord M.*
 as well a certain debt of 391*l.* as 50*s.* which
 in the said court of the said king were ad-
 judged to the said *W.* for his damages by
 occasion of the detaining that debt to be le-
 vied of the goods and chattels whch were
 of the said *C. lord M.* at the time of his
 death in the hands of the said *C. M.* and lady
E. M. to be administered, if they had so
 much in their hands; and if they had not,
 then the damages aforesaid to be levied of
 the proper goods and chattels of the said *C.*
M. and lady *E. M.* whereof they were con-
 victed, as by the records and proceedings

Declaration on
a Scire facias
upon a judg-
ment recover-
ed against the
defendant and
his wife (since
deceased) ex-
cutrix.

*Death of the
wife.*

*Defendant ad-
ministrator of
his wife, and
administrator
de bonis non,
&c. of h.r.
testator.*

thereupon in the court of our lord the present king now here remaining manifestly appeareth; yet execution of the said judgment still remaineth to be done, and the said lady *E. M.* is dead, as the king hath heard from the information of the said *W.* And because *Ec.* by good, *Ec.* he should make known to the aforesaid *C. M.* administrator of the goods and chattels which were of the said lady *E. M.* and administrator, with the will of the said *C. lord M.* annexed, of the goods and chattels which were of the said *C. lord M.* at the time of his death, unadministered by the said lady *E. M.* that she should be here at this day, *to wit*, on the octave of the Purification of the blessed *Mary*, to shew if any thing, *Ec.* why the said *W.* ought not to have execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said *C. lord M.* at the time of his death, being in the hands of the said *C. M.* to be administered, according to the form of the recovery aforesaid, if, *Ec.* And now here at this day comes as well the said *W.* by *F. P.* his attorney, as the said *C. M.* summoned, *Ec.* by *J. S.* his attorney; and the sheriff, *to wit*, *J. R.* esq; and *T. C.* esq; now return, that he, by virtue of the said writ to him directed by *R. H.* and *S. W.* good, *Ec.* had made known to the said *C. M.* that he should be here at this day to shew in form aforesaid, *Ec.* And upon this the said *W.* prayeth execution to be adjudged to him against the said *C. M.* of the

in the Court of Common Pleas.

the debt and damages aforesaid, to be levied of the goods and chattels which were of the said C. lord M. at the time of his death not administered by the said lady E. M. in the hands of the said C. M.

And the said C. M. by J. S. his attorney cometh and saith, that the said W. ought not to have his execution against him of the debt and damages aforesaid, of the goods and chattels which were of the said C. lord M. at the time of his death, because he saith no goods or chattels which were of the said C. lord M. at the time of his death not administered by the said lady E. M. at the time of the death of the said E. or at any time afterwards. have come to the hands of the said C. M. to be administered; and that he the said C. M. hath not, nor on the day of suing forth the said writ, nor at any time afterwards, had any goods or chattels which were of the said C. lord M. at the time of his death in the hands of him the said C. M. to be administered, whereof he could have satisfied the said W. of the debt and damages aforesaid, or any parcel thereof: And this he is ready to verify: Wherefore he prayeth judgment, if the said W. ought to have his execution against him of the debt and damages aforesaid of the goods and chattels which were of the said C. lord M. at the time of his death.

And the said W. saith, that he by any thing before alledged ought not to be barred from having his execution against the said C. M. for the debt and damages aforesaid,

of the goods and chattels which were of the said C. lord M. at the time of his death, because, he saith, that the said writ of the said W. was sued forth on the 24th day of *January* in the year of his present majesty's reign; and that the said C. M. on the said day of suing forth the said writ had diverse goods and chattels which were of the said C. lord M. at the time of his death in the hands of the said C. M. to be administered, to the value of the debt and damages aforesaid, wherewith he could have satisfied the said W. for the debt and damages aforesaid, *to wit*, at *Westminster* aforesaid; and this he prayeth may be inquired of by the county.

In the Common Pleas.

Michaelmas ——— George *third*.

*Declaration
on a Sci. G.
upon a judgment for assets
in futuro
against an executrix.*

London, **I**T was commanded to the she-
to wit, **I**riffs, Whereas M. G. widow,
and N. V. lately in the court of our lord the
present king here, before the justices of our
lord the present king of the bench here,
to wit, at *Westminster*, by the judgment of
the said court had recovered against K. M.
late of *London*, widow, executrix of the tes-
tament and last will of H. M. late of *Lgn-*
don, esq; her late husband deceased, 1480*l*.
for their damages which they had sustained,
as well by occasion of the not performing
certain promises and undertakings made by
the

the said *H.* in his life-time to the said *M.* and *N.* in *London*, to wit, in the parish of *St. Mary Le Bow* in the ward of *Cheap*, as for their costs and charges by them the said *M.* and *N.* about their suit in that behalf expended, adjudged to the said *M.* and *N.* by the said court of our said lord the king, before the justices of our said lord the king at *Westminster*, to be levied of the goods and chattels which were of the said *H.* at the time of his death, which after the giving the said judgment should come to the hands of the said *K.* to be administered, where if she was convicted, as By the record and proceedings thereupon remaining in the said court of our said lord the king before the justices of our said lord the king here, *to wit*, at *Westminster*, aforesaid manifestly appeareth. *And Suggestion of*
whereas, after the said judgment was given, *affects since*
diverse goods and chattels which were of the *come to defend-*
ant's hands.
said *H.* at the time of his death, to the value of the damages aforesaid and above, have come to the hands of the said *K.* to be administered, out of which she could have satisfied the said *M.* and *H.* of their damages aforesaid, as the king has been given to understand by the information of the said *M.* and *N.* And because, &c. that by good, &c. they should give notice to the aforesaid *K.* that she might be here at this day, *to wit*, on the morrow of *St. Martin*, to shew if any thing, &c. why the said *M.* and *N.* ought not to have execution against her of the damages aforesaid of the goods and chattels which were of the said *H.* at the time of his

death, which after the said judgment was given have come to the hands of the said *K.* to be administered, according to the form and effect of the recovery, if, &c. And now here at this day came as well the said *M.* and *N.* by *J. H.* their attorney, as the said *K.* by *J. S.* her attorney; and the said *M.* and *N.* offered themselves on the fourth day against the said *K.* of the plea aforesaid; and the sheriffs now returned, that by *J. N.* and *R. R.* good, &c. they had given notice to the said *K. M.* to be here at this day, to shew, &c. and upon this the said *M.* and *N.* pray execution against the said *K.* of the damages aforesaid, of the goods and chattels which were of the said *H.* at the time of his death, which after the said judgment was given have come to the hands of the said *K.* to be administered, to be adjudged to them, &c. Upon which the said *K.* saith, that after the said judgment was given no goods or chattels which were of the said *H.* at the time of his death, have come to the hands of the said *K.* to be administered, whereof she could have satisfied the said *M.* and *N.* of their damages aforesaid, or of any parcel thereof; and of this she putteth herself upon the country; and the said *M.* and *H.* likewise: Therefore the sheriffs are commanded, that they cause to come here twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c.

Defendant appears.

Sheriffs return Scire fec.

Defendant pleads no assets come to hand.

Issue.

You enter the writ of *Scire facias* and *Alias*, if any, on the prothonotary's remembrance

brance roll, and give a rule thereon for the defendant to appear.

The plaintiff on motion in the treasury *No costs on* may quash his own *Scire facias* without pay- *Sci. fa. till* ing costs, though the defendant has appear- *plea.* ed; for the practice of this court is, that no costs shall be paid on proceedings by *Scire facias* till a declaration be delivered, and the defendant has pleaded.

In a *Scire facias* to revive a judgment it is *Term of the* not necessary to insert the particular term in *judgment not* which the judgment was given *Barnes 431. necessary.*

At common law, if after judgment the plaintiff sued not execution within the year, he had no remedy, but by an action on the judgment; but a *Scire facias* in personal actions is given by the statute of *Westminster 2. c. 45. 2 Inst. 469, 470, vide Salk. 600.*

If there be a *Cesset executio* for a year, the *Where no Sci.* plaintiff may within the next year take out *fa. if a Cesset* execution without a *Scire facias.* *execut.'*

If the plaintiff be delayed from taking out *Scire facias* execution within the year and a day by an *must be sued* injunction out of *Chancery*, he cannot after *o t tho' execu-* the injunction dissolved take out execution *tion stayed by* without reviving the judgment by *Scire fa-* *injunction.* *cias*; but it will be no breach of the injunction to take out execution within the year, so as it be not executed, which will save the trouble or bringing a *Scire facias*, by continuing the execution on the roll by *Vic' non* *ex' t' breve. 6 Mol. 288. But see Rep. and* *Cas. of Pract. C. P. 82. & Pract. Reg. C. P. 377.* Both which seem *contra.*

Defendant charged in execution 4 years after judgment without Sci. fa.

Execution by default was awarded on a *Scire facias* upon a judgment in debt, and the defendant four years afterwards being in the Fleet for another cause was brought into court by *Habeas corpus*, where he admitting himself to be the same person was committed in execution *moraturus quousque*—*Note post annum & diem alique novo Scire facias.* Dy. 214. pl. 47.

On death of defendant.

If a man recovers debt or damages by judgment, and the defendant dies, no execution lies against his executor without a *Scire facias*.

Or of plaintiff Sci. fa. must issue.

If a man has judgment for debt or damages, and dies before execution, his executor shall not have execution, though it be within the year, without a *Scire facias*.

Vide antea fol. Death of either party after interlocutory judgment, and before final judgment.

But not on death of one where there are many plaintiffs or defendants.

If there be two plaintiffs in a personal action, and one of them dies, that shall not put the other to a *Scire facias*; so if one of the defendants die. *Moor* 367. pl. 503. *Noy* 150. 5 *Mod.* 339. 7 *Mod.* 68. But a suggestion of the death must be made on record. *Salk.* 319.

Into what county Sci. fa. on a judgment must issue.

On a judgment wherein the action was laid in Cumberland a *Scire* was brought in *Westmoreland*, and judgment was had thereon; but that judgment was reversed on error in the *Exchequer* chamber, for a *Scire facias* must be brought in the same county where the first action was laid. *Hob.* 4. *Cro. Car.* 228, & *vide Fel.* 218. S. C. for the diversity

ty between a *Sci e facias* on a judgment, and
 execution of debt on a judgment.

If a recognizance of bail be taken before a judge at his chambers in *London*, and entered on record as taken in *London*, it was resolved by all the prothonotaries, that the *Scire facias* should be directed to the sheriffs of *London*, and not to the sheriff of *Middlesex*, *Bro. Abr. fol 116. b pl 85.* though the recognizance is not a perfect record 'till it be entered upon the roll; yet when it is entered, it is a record from the first a knowledge, and binds persons and lands from that time, for it is the acknowledgment before the judge that gives it the force of a record, though the enrolment be necessary for the testification and perpetuity of it. *Ilob. 195.* But in the case of *Andriens* and *Harborne* the prothonotaries decided, that upon such recognizance the *Scire facias* might be brought in *Middlesex*, or in *London*; and that it used to be brought either in *London* or *Middlesex*. *Roll. Abr 891. All. 12.* So where bail taken by commissioners in the county of *York*, a *Scire facias* lies against them either in the county of *York* or *Middlesex*. *2 Lutw. 1287. Vide Salk. 564, 600, 659.*

Leave to amend *Sci. fa* against bail, sometimes refused, where advantage of surrendering principal would thereby be lost. *Barnes 26, 27.*

Outlawry.

Outlawry.

IN the following actions, viz. Trespafs, assault, case, covenant, account, debt, detinue and replevin, you may proceed to outlaw a man who is not easily to be arreſted, and hath not ſufficient eſtate in the county whereby he may be ſummoned, &c.

Deſt. ſooner outlawed in London than in another county.

If the action be laid in *London*, the defendant will be ſooner outlawed than in another county, in regard that between the teſte and return of the exigent there are five county days, which are held every month and the *Hujings* in *London*, which are the county days, are held every fortnight.

Of the Præcipe for the original.

You cannot outlaw a man on proceſs with *Accitams*; and if your original be only a *Claufum fregit*, the defendant may reverſe the outlawry without bail, and therefore the beſt way is to make out a *Præcipe* for a ſpecial original, which is in this form, according to the nature of the action.

A Præcipe for a ſpecial original on an Indeb. aſſumpſit for the charges of a funeral.

London, If *T. J.* ſhall make, &c. then put, &c. *C. W.* late of *New Bond-ſtreet* in the county of *Middleſex*, upholſter, that he be before our juſtices at *Weſtminſter*, on the morrow of the Purification of the bleſſed *Mary*, to ſhew wherefore whereas the ſaid *C.* on the 10th day of *Auguſt* in the year of our Lord 1766, at *London*, to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was indebted to the ſaid *T.* in 60*l.* lawful money of *Great Britain*, as well for work,

work, labour and care of the said *T.* about the funeral of one *R. F.* deceased, by the said *T.* before that time, at the special instance and request of the said *C.* done and performed, as for diverse materials and necessary things, by the said *T.* at the like special instance and request of the said *C.* at the costs and charges of the said *T.* on that occasion found and provided; and by the said *T.* in and about that funeral used and expended; and being so indebted the said *C.* in consideration thereof afterwards, *to wit*, on the same day and year at *London* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *T.* that he the said *C.* would well and truly pay to the said *T.* the said 60*l.* when he should be thereunto afterwards required.

And also whereas the said *C.* afterwards, *to wit* on the day and year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *T.* at the like special instance and request of the said *C.* had before that time done and performed other work and labour in and about the funeral of one *R. F.* deceased, and at the like special instance and request of the said *C.* had found and provided at the costs and charges of him the said *T.* diverse materials and necessary things on that occasion, and had expended and used the said materials and necessary things last mentioned in and about the last mentioned funeral, undertook, and then and there faithfully promised the said *T.* that he the said *C.* would, when he should be thereunto

Quantum meruit thereon.

thereunto required, well and truly pay and content to the said T. not only all such sums of money as the said T. reasonably deserved to have for his said work and labour last above mentioned, but also all such sums of money as the said materials and necessary things last mentioned at the time of the finding and providing thereof, as aforesaid, were reasonably worth; and the said T. averreth, that he reasonably deserved to have for his last mentioned work and labour 20*l.* of like lawful money; and that the materials and necessary things last mentioned were at the time of the finding and providing thereof, as aforesaid, reasonably worth 40*l.* of like lawful money, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, of which afterwards, that is to say, on the same day and year aforesaid, the said C. there had notice: *Nevertheless* the said C. no ways regarding his said promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said T. in this behalf, has not paid to the said T. the said several sums of money, or any part thereof, nor any ways contented him for the same (although the said C. afterwards, *to wit*, on the 12th day of *August* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, was thereunto requested by the said T.) But he hath hitherto refused, and still doth refuse to pay the same to the said T. to the damage of the said T. of 6*l.* as he saith,

Returnable, &c.

You

Breach.

You carry this *Præcipe* to the curfitor of the county, who will thereupon make out an original: If the *Præcipe* be carried to the curfitor before the effoin-day of a term, he will make the original returnable on any return of the precedent term. You may return the original of course thus: *Of returning the original.*

Pledges of prosecuting { *John Doe,*
Richard Roe.

The within named *C. W.* hath nothing in our bailwic by which he can be attached [or * summoned]

J. B. esq; }
and } sheriffs.
W. W. esq; }

You must carry the original thus returned to the filacer of the county, who will make out a *Capias*, *Alias* and *Pluries* all together, if the original will bear it, each of which writs must have 15 days between the teste and return. After the *Capias*, *Alias* and *Pluries* are sealed, you may return them severally, after this manner: *Of making out Capias, Alias and Pluries.*

The within named *C. W.* is not found in our bailwic. *Of returning them.*

* *Vide antea fol.*

The Attorney's Practice

The answer of
J. B. esq; }
 and } *Sheriffs.*
W. W. esq; }

I apprehend the plaintiff ought to make an affidavit of his debt on suing out the *Capias*, and endeavour to get the *Capias*, *Alias* and *Pluries* executed, if possible, and let them be returned by the sheriff.

Warrant of attorney to be filed of the same term with the exigent.

Every attorney shall file his warrant of attorney of the term wherein any *Exigent* is awarded, upon pain of 40*s.* for every time he offends, and is attainted by due examination of the justices of this court; such warrant to be filed upon or before the effoin-day of every *Trinity* term, and within 21 days after the end of every other term. *Hil. 14, 15 Car. 2.*

Exigent not to receive Pluries before signed by clerk of the warrants.

No exigent shall receive any *Pluries capias* in order to made an exigent or proclamation thereon, before the same be signed or stamped by the clerk of the warrants, or his deputy, to the end it may appear, that the warrant of attorney therein is duly filed. *Hil. 2, 3 Jac. 2.*

*Trinity term in the seventh year
 of the reign of king George the
 third.*

The warrant of attorney.

London. *T. J.* putteth in this place *L. R.*
 his attorney against *C. W.* late
 of *New Bond-street* in the county of *Middle-*
sex,

~~Tex~~, upholster, in a plea of trespass on the
case.

This warrant of attorney being filed, for *Exigenter, on*
which you pay 4*d.* the clerk of the warrants *receipt of the*
stamps the *Pluries*, which you thereupon *Pluries stamp,*
carry to the exigenter of the county, who *to make out*
will make out an exigent and proclamation, *the exigent*
which you are to get sealed, and carry to the *and proclama-*
sheriff of the county in which you have laid *tion.*
the action, and the proclamation to the sher-
riff of that county wherein the defendant
dwells at the time of awarding the exigent.

If there happen not to be five county *Where an*
days between the teste and return of the exi- *Allocatur*
gent, you must apply to the exigenter for *necessary.*
an *Allocatur* to bring in the five county days;
and the like must be in *London* for want of
Hustings.

You may make out your process in order,
and endeavour to take the defendant on any
of them; and it is the safer way so to do.

Where any exigent shall be awarded, a writ *When an exi-*
of proclamation shall be made out of the *gent is award-*
same teste and return as the writ of exigent *ed, a procla-*
directed to the sheriff of the county where *mation to be*
the defendant at that time of the exigent *made out of*
awarded shall be dwelling, which writ of *the same teste*
proclamation shall contain the effect of the *and return.*
same action; and the sheriff to whom the *Sheriff to make*
proclamation shall be directed shall make 3 *three procla-*
proclamations, *viz.* one in open county *mations.*
court, one other at the general quarter-ses-
sions of the peace in those parts, where the
defendant at the time of the exigent award-
ed shall be dwelling; and one other one
month

month at least before the *Quint. exat.* by virtue of the writ of exigent, at or near the most usual door of the church or chapel of that town or parish where the defendant shall be dwelling at the time of the exigent awarded; and if the defendant shall be dwelling out of any parish, then in such place as aforesaid of the parish next adjoining to the defendant's dwelling, and upon a Sunday immediately after divine service. All outlawries pronounced, and no proclamation awarded and returned, according to this statute, are void.—*Stat. 31 Eliz. c. 3. §. 1.*

His fee.

The sheriff, for making the proclamation at or near the church door, shall have 12 *d.* Same *stat. §. 1.*

Officer who makes out the exigent to make out the proclamation. His fee.

The officer in whose office the exigent shall be taken shall make out the proclamation, and shall take no more for making such writ of proclamation, and entering it on record, but only 6 *d.* *Stat. 6 Hen. 8. c. 4. §. 3, 4.*

Attornies to be careful that writs of proclamation be delivered.

According to the provision of the statute of the 31 *Eliz.* all attornies are to be careful that writs of proclamation be delivered, and the sheriffs to take care duly to execute the same. *Mich. 1654.*

Proclamation to be filed with the Custos brevium.

After the exigent and proclamation is returned, you file the proclamation with the *Custos brevium*, and carry the exigent to the clerk of the outlawries, who will thereupon make out a *Capias utlagatum* either general or special, the one against the defendant's body, the other against his body, goods and lands,

Capias utlagatum either general or special.

lands, into as many counties as you shall think proper either in *England* or *Wales*.

If the defendant appears by *Superfedeas* If defendant appears on the exigent, no bail is required. or doth truly render himself the exigent, no bail is requirable. int, 654.

No sheriff, under-sheriff, their deputies or bailiffs, shall set at liberty any person arrested upon any *Capias utlagatum*, until he receive a *Superfedeas* according to law from the officer thereunto appointed. *Mich. 1654. Stat. 13 Car. 2. c. 2. §. 4.* Sheriff not to discharge defendant arrested on Capias utlagatum without a Superfedeas.

No sheriff, under sheriff, &c. shall set at liberty any person taken upon any writ of *Capias utlagatum*, nor discharge the lands or goods of any person outlawed, without a lawful *Superfedeas* under the seal of the court. *Hil. 15, 16 Car. 2.*

Upon affidavit made and filed, that any sheriff, officer, or bailiff, has enlarged any person arrested upon *Capias utlagatum* before judgment, without a lawful *Superfedeas* in that behalf, the person so offending shall pay Penalty of 40s to the party grieved, who shall have an &c. action of course against such sheriff, officer, bailiff, or party offending, for payment of the same; and the party offending shall likewise undergo such other punishment as by the court shall be thought fit. *Trin. 2 Jac. 2.*

Before the reversing of any outlawry, or any *Superfedeas* made thereunto, the defendant shall give special bail, if the sum or damages expressed in the original, whereupon the exigent was awarded, shall amount to the Before Superfedeas defendant to give bail, if the cause of action be 10l. or sum upwards;

sum of 10*l.* or upwards. *Hil.* 15, 16 *Car.* 2. *Trin.* 2 *Jac.* 2.

Defendant to give bail to satisfy the condemnation.

Before any allowance of any writ of error, or reversing of any outlawry be had, *or* *plaintiff* *or* otherwise, through or by writ of *certiorari* or proclamation to be had or made according to this statute, the defendant in the *original* action shall put in bail, not only to appear and answer the plaintiff in the former *day* in a new action, to be commenced for the cause in the first action, but also to satisfy the condemnation if the plaintiff shall begin his suit before the end of * *two terms* next after the allowing the writ of error, or otherwise avoiding the said outlawry. *Stat.* 31 *Eliz. c.* 3. *f.* 3. *Mich.* 12 *Geo.* 1. the rule says of * *the term* next after, &c.

Outlawry after the death of the plaintiff not to be reversed without bail to the executor.

No outlawry after the death of the plaintiff in the action shall be reversed, without the defendant's appearing and putting in special bail (if the action requires it) to the executor or administrator of the plaintiff *or* to the husband and wife, where the wife while a *Feme* sole sued the defendant to an outlawry before marriage, provided that the defendant's attorney do, within 14 days after notice given of the defendant's intention to reverse the outlawry, deliver the name of the executor or administrator of such deceased plaintiff to the proper prothonotary. *Trin.* 2 *Jac.* 2.

Judgment of outlawry appearing to be entered after plaintiff's death, and *Cap. utl.*

to be issued without revival of judgment ;
Cap. ult. was set aside. *Barnes* 325.

By *Cap. ult.* commenced and completed during defendant's residence in *Ireland*, was ordered to be reversed at his expence, without writ or appearance. *Barnes* 325. But court should not exercise their discretionary power to reverse outlawries on motion in a summary way for a visible defect, but in a favorable case for defendant ; and therefore where he appeared to be an absconding person, and the motion, though in his name, not made by him, but by a third person, and the matter appearing to be a contention between creditors, the court would not interfere, but put party to bring his writ of error. *Barnes* 325, 326.

No defendant, who shall be outlawed and shall appear and reverse such outlawry, shall upon the reversal pay to the plaintiff any sum of money exceeding the usual costs of the *Exigent*, together with the fine paid to the king upon the original, and all further costs shall be respited to the time of signing judgment for the plaintiff. *Trin.* 33 *Car.* 2.

Upon every writ of *Exigent*, if a *Superfedeas* be not put in thereto, at or before the day of appearance thereof, no *Superfedeas* shall by any sheriff be allowed to any such writ, until the defendant shall have paid unto the plaintiff or his attorney, or left in the court with one of the prothonotaries thereof, the full and just costs of suit therein ; and upon the reversal of any outlawry the defendant shall, before the reversal or any *Superfedeas*

On reversing an outlawry defendant only to pay costs to the exigent, and the fine.

Further costs respited quousque.

No Superfedeas to the exigent, unless put in before the day of appearance, to be allowed till costs paid.

On reversal defendant shall pay costs to the exigent.

Where inquisition taken, &c. further costs to be taxed. *persedeas*, pay to the plaintiff or his attorney, or leave in the court for him the full costs of suit to the *Exigent*. And where the sheriff shall have taken an inquisition and extended the goods, chattels, &c. and returned the same into the *Exchequer*, further costs shall be taxed by the prothonotary, and paid to the plaintiff or his attorney, or left in the court for him, as *unday* plaintiff hath been at in prosecuting the inquisition, before any certificate of the reversal shall be made by the clerk of the outlawries. *Trin. 2 Jac. 2.*

On making out a *Superseas* the defendant need not enter an appearance with the *Exigenter*; the *Superseas* itself is an appearance. *Dyer 233.*

On reversing an outlawry, if plt. proceed not in two terms next to have costs taxed. Every defendant who shall be outlawed, and cause the said outlawry to be reversed, if the plaintiff thereupon shall not proceed within two terms next after notice of reversing thereof, shall have costs to be taxed by the prothonotary. *Trin. 33 Car. 2.*

Of outlawing after judgment A man may be outlawed after judgment, and that without any writ of *Mias*, *Pluries*, or proclamation. In this case you take out a writ of *C. pias ad satisfaciendum*, which must have 15 days between tette and return; and if the defendant cannot be taken thereon, you get the sheriff to return *Non est inventus* on the writ, and then carry it to the *Exigenter*, who will make out a writ of *Exigent* against the defendant, upon the return of which you may have a *Capias utlagatum*, either general or special, and into as many counties as you please, either in *England*

land or Wales; and if the defendant's body be taken, or his goods extended thereon, he can obtain no discharge for either till he has made satisfaction.

But if a writ of error be brought on the *No outlawry* *after judgment,* *pending a writ of error.* it is intimated, that the plaintiff cannot proceed to *awrit* the defendant pending the writ of error, for though the plaintiff may bring an *arrester* of debt on the judgment pending a writ of error, and proceed to judgment thereon, it has always been confined to restraining the plaintiff from taking out execution, and the *Exigent* being founded on the *Capias ad satisfaciendum* is a proceeding to execution, and therefore not justifiable.

It much behoves practisers to be cautious when they outlaw, for if the defendant appears * publickly, and the attorney can be affected with the knowledge of it, the court will, I apprehend, make him reverse it at his own charge, if not otherwise punish him:

Before defendant is returned outlawed, he may supersede the *Exigent*, though founded on a special original, but cannot after, without bail, who are bound to pay the money at all events, not being at liberty to render the principal in their discharge. *Barnes* 326.

A visible person outlawed, he being a desperate man, riding armed, and telling the plaintiff that he absconded. *Pract. Reg. C. P.* 272. See *Barnes* 325.

A person visible outlawed, he living within the verge of the court, and plaintiff not being able to obtain leave to arrest him. *Pract. Reg. C. P.* 274.

Of procuring
the money le-
vied on the
defendant's
goods.

Where the defendant's goods are taken on the special *Capias utlagatum*, the sheriff, if the plaintiff requires it, will extend and appraise the goods by inquisition, and for that purpose the plaintiff must first have them inventoried and appraised by proper persons to give evidence of their value to the jury, if they are not worth above 10*l.* they will hardly be worth the plaintiff's trouble to extend them. In *Middlesex* the sheriff takes the inquisition as follows :

	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
For taking the inquisition, schedule of the goods seized, and return	—	—	—	0	18	6
To the bailiff for summoning the jury	0	4	0			
For the use of the room where the inquisition is taken	0	1	0			
To every juryman 1 <i>s.</i> —	0	12	0			
	—	—	—	1	17	6
				1	15	0

It may be proper to give the defendant notice of taking the inquisition, as is done of executing a writ of inquiry.

If there be occasion, a *Subpoena* for witnesses may be made out in the following form.

GEORGE, &c. To A. B. &c. greeting.
We command you, and every of you,
that

that all excuses being laid aside, you be in your proper persons before the sheriff of our county of *Middlesex* on — the — day of — at — of the clock in the forenoon at the court-house at *Westminster* in the parish of *St. Martin* in the ward of *the Three Tons* in *Brook-street* near *St. Dunstons* in the county of *Middlesex*, to testify and declare the truth according to your best knowledge, upon a certain inquisition to be returned by the said sheriff, on the oath of good and lawful men of his county, pursuant to our precept to inquire what lands and tenements, goods and chattels *W. S.* late of, *&c.* was possessed of on the — day of — in the year of our Lord —, on which day he was outlawed at the suit of *R. R.* And this you, either or any of you, are not to omit, under the penalty of 100*l.* for the default of each of you. Witness, *&c.*

When the *Capias utlagatum* is returned with the inquisition annexed, it must be carried to the clerk of the outlawries, who will transcribe, and transmit it into the *Exchequer*; then a clerk in the king's remembrancer's office must be employed, who will sue out a writ of *Venditioni exponas*, by virtue of which the sheriff will sell the goods. If the money raised exceeds not 20*l.* the court of *Exchequer*, on motion, will order the money to be paid to the plaintiff; but if the money be above 20*l.* a petition to the following effect must be presented to the lords of the treasury.

*To the right honourable the lords
commissioners of his majesty's
treasury.*

The humble petition of R. R.

*Petition to the
lords of the
treasury.*

Sheweth,

THAT *W. S.* late of, &c. being indebted to your petitioner in the sum of 50*l.* your petitioner did in *November* last, at his very great charge, prosecute the said *W. S.* to an outlawry; and by virtue of a special *Capias utlagatum* directed to the sheriff of *Middlesex*, several goods of the said *W. S.* were seized, and found by inquisition to be of the value of 45*l.* which goods were afterwards sold by the said sheriff, by virtue of a writ of *Venditioni exponas*, at the same price and value they were so appraised at, and the money thereupon raised now remains in the hands of the sheriff of *Middlesex*.

That your petitioner's said debt, and the charge he has already been at in prosecuting the said outlawry, greatly exceed the sum so remaining in the said sheriff's hands.

Wherefore your petitioner humbly prays your lordships, that the money so received as aforesaid may be paid over to your petitioner.

*And your petitioner shall ever
pray, &c.*

This

This petition the lords of the treasury will refer to their solicitor, now *Thomas Nuttall*, esq; The plaintiff must make an affidavit before one of the barons of the *Exchequer*, setting out the allegations in the petition, the amount of his debt and the charge he has incurred. This affidavit, with the attorney's bill, *Venditioni exponas* and return, must be presented before the solicitor of the treasury, who being satisfied of the truth of the petition will make a report to their lordships accordingly, and then a warrant will issue to his majesty's attorney general, to consent that so much of the money levied as shall remain in the hands of the sheriff, after deducting the usual poundage, be paid to the plaintiff, towards satisfaction of his debt and costs, on his moving the court of *exchequer* for an order for that purpose; this warrant must be delivered to the attorney general, who on the plaintiff's making such motion by counsel, will consent accordingly, and thereon producing the order under seal, the sheriff will pay the money to the plaintiff.

The expence out of pocket of this application.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty and oath of the affidavit	0	2	6
To the solicitor of the treasury	1	1	0
To his clerk	0	5	0
At the treasury, for the reference,	3	3	0
<i>Ec.</i> warrant and poundage, when			
the sum does not exceed 50 <i>l.</i>			
you pay about			

To

		<i>l.</i>	<i>s.</i>	<i>d.</i>
To the attorney general	—	2	2	0
To his clerk	—	0	2	6
Fee to the counsel to move	—	0	10	6
To the clerk in the <i>Exchequer</i> according to the length of the proceedings, about	—	5		

Of writs of error.

WHERE a party apprehends himself grieved by the judgment of this court, he may remove the same by a writ of error into the *King's Bench*. This writ is made out by the curfitor for the county wherein the action is laid; and is in this form:

A writ of error.

GEORGE the second, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To his trusty and well-beloved Sir *knt.* chief justice of the bench, greeting. Forasmuch as in the record and process, and also in giving of judgment, in a plaint which was in our court before you and your associates, our justices of the said bench, by bill between *William Norman* and *Samuel Burrough*, gent one of the attornies of our court of the bench, of a certain trespass upon the case done to the said *William* by the said *Samuel* as it is said, manifest error hath intervened, to the great damage of the said *Samuel*, as by his complaint we are informed, we, willing that the said error, if any be, be duly amended,

ded, and full and speedy justice done to the said parties in this behalf, do commend you, that if judgment be given thereupon, then you send to us distinctly and plainly under the record and process of the said writ, with all things touching the same, and that we may have them on the octave of St. Hilary, wheresoever we shall then be in *England*, that inspecting the record and process aforesaid, we may cause farther to be done thereupon for amending the said error, as of right, and according to the law and custom of *England*, shall be meet to be done. Witness *Caroline*, queen of *Great Britain*, &c. guardian of the same realm, &c. at *Westminster*, the 26th day of *November* in the 10th year of our reign. *Bu gb.*

You pay for this writ 13s. viz. 10s. 6d. Of allowing the assessor's fee and seal, and 10s. 6d. for the king's duty. You carry this to the clerk of the errors to be allowed, for which you pay 2l. 2s. 6d. whereupon he gives you a note directed to the attorney of the adverse party, signifying his allowance of the writ, which notice you must deliver accordingly.

No execution shall be stayed upon any writ *Writ of error* of error, or *Superfeta*, thereupon to be sued *no Superfetas* for the reversing or any judgment given in *on any single* any action, or bill of debt, upon any *bond for debt,* single *bond condition-* bond for debt, or upon any obligation, *or bond for payment* condition for the payment of money only, or of money on y, upon any action or bill of debt for rent, or *debt for rent,* or on any con- upon any contract, unless such person in whose *tract.* name such writ of error shall be brought, *Unless bail put* with two sufficient sureties, such as the court is.

(wherein

(wherein such judgment is given) shall allow of, shall first before such stay made, or *Superfedeas* awarded, be bound unto the party for whom such judgment is given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be covered by the said former judgment, to prosecute the said writ of error with effect; and also to pay (if the said judgment be affirmed) the debt, damages and costs adjudged upon the former judgment; and all costs and damages to be awarded for the same delaying of execution. Stat. 3 Jac. 1. c. 8.

To prosecute
with effect.
P y the debt,
&c.

And costs for
delay of execu-
tion.

Writ of error
no *Superfedeas*
after verdict.
On action n.
Stat. 2 Ed. 6.
Promise for
payment of
money, trover,
covenant, de-
tinus and trep-
pass.
Unless bail as
aforesaid.

And no execution shall be stayed by any writ of error, or *Superfedeas* thereupon, after any verdict and judgment thereupon obtained in any action of debt, on statute 2 Edw. 6. for not setting forth of tithes, nor in any action upon the case, upon any promise for payment of money, action *sur trover*, action of covenant, *detinue* and *trespass*, unless such recognizance, and in such manner, as by the said act 3 Jac. 1. is directed, shall be acknowledged in the said court where such judgment is given. The second stat. 13 Car. 2. c. 2. s. 8, 9.

On writ of er-
ror after ver-
dict, double costs
if judgment af-
firmed.

And if any person shall sue or prosecute any writ of error for reversal of any judgment whatsoever given after any verdict, and the said judgment shall be affirmed, then such person shall pay unto the defendant in the said writ of error his double costs, to be assessed by the court where the writ of error shall be depending, for the delaying of execution. Same statute, s. 10.

And

And no execution shall be stayed by writ of error, or *Superfedeas* thereupon, after verdict and judgment thereupon, in any action personal whatsoever, unless a recognizance with condition, according to the statute 3 *Writ of error no Superfedeas after verdict in any action personal, unless bail as aforesaid.* *Sec. 1.* shall be first acknowledged in the court where the judgment shall be given. In writs of error brought upon any judgment after verdict in any writ of dower, or in any action of *ejectione firmæ*, no execution shall be stayed, unless the plaintiff in such writ of error shall be bound unto the defendant in such writ of dower, or action of *ejectione firmæ*, in such reasonable sum as the court to which such writ of error shall be directed, shall think fit, with condition that if the judgment shall be affirmed, or that the said writ of error be discontinued in default of the plaintiff therein, or that the said plaintiff be nonsuit in such writ of error, that then the plaintiff shall pay such costs, damages, and sum and sums of money, as shall be awarded upon such judgment affirmed, discontinuance, or nonsuit had. *Stat. 16, 17 Car. 2. c. 8. s. 3.* *Nor after verdict in dower or ejection.* *Unless plt. in error be bound, &c.*

The court, wherein such execution ought to be granted upon such affirmance, discontinuance or nonsuit, shall issue a writ to inquire, as well of the mesne profits, as of the damages by any waste committed after the first judgment in dower or *ejectione firmæ*; and upon the return thereof, judgment shall be given and execution awarded for such mesne profits and damages, and also for costs of suit. *Same stat. s. 4.* *On affirmance, &c writ to inquire of the mesne profits, &c.*

This

This act not to extend to executors, &c.

Penal statutes, &c.

Nor indictments, &c.

In what penalty recognizance shall be taken on a writ of error after verdict in ejectment, or dower.

No bail in error on bond for performance of covenants, tho' condition did not appear on record.

Bail in error on judgment upon bond for payment of money mentioned in a mortgage.

This act not to extend to any writ of error to be brought by any executor or administrator, nor to any action popular, nor to any action upon any penal law or statute (except action of debt for not setting forth of tithes) nor to any indictment, presentment, inquisition, information or appeal. *Same stat. §. 5.*

To ascertain the practice of this court, and settle for the future what shall be deemed a reasonable sum for the penalty of the recognizance, to be entered into where a writ of error is brought upon any judgment after verdict in ejectment or dower; it is ordered, that the recognizance to be entered into on every such occasion, pursuant to the statute 16 & 17 Car. 2. shall be taken in a penal sum, to the amount of two years value of the premises comprised in the verdict; and double costs recovered, subject to the condition mentioned in the said act. *Trin. 24 & 25 Geo. 2.*

Judgment in debt on a bond conditioned for the performance of covenants, but notwithstanding the condition did not appear on the record, the court held, that the matter of bail being examinable by affidavit, and the bond being conditioned as above, bail was not required on the writ of error. *Spinks and Bird, Mich. 10 Geo. 2. Barnes 72.*

Judgment in debt on bond conditioned for payment of 300 l. mentioned in a surrender in mortgage of copyhold lands; writ of error brought, and bail ordered. *Woods and Armstrong, Mich. 12 Geo. 2. Barnes 78.*

Scire facias on a recognizance of bail in error, award of execution thereon against the bail, who bring a writ of error upon that award of execution. No bail is required on this writ of error, for that would be bail *ad infinitum*. No bail required on writ of error brought by bail in error.

No attorney shall make out any execution *Non obstante brevi de errore* until he has had a certificate from the clerk of the errors, that the record is not removed, and a *Non pros* thereupon duly signed. *Trin. 28 Car. 2.* No execution Non obstante errore, without certificate of Non pros signed.

All writs of error shall be forthwith delivered to the clerk of the errors for the time being; and no one shall be obliged to forbear suing out execution by pretence of any writ of error, before the writ of error shall be delivered to the clerk of the errors. *Same rule, and Mich. 28 Car. 2.* Writ of error to be delivered to the clerk of the errors. And till then no stay of execution.

Held, that a writ of error is not a *Superfedeas* from the time of the sealing, but from the delivery to the clerk of the errors. *Mich. 15 Geo. 2. C. B. Meriton v. Stevens. Barnes 205. Hil. 18 Geo. 2. C. B. Sykes v. Dawson. Barnes 209.*

And in cases where special bail is required, unless the plaintiff on such writ of error shall, within four days after the delivery thereof, put in bail according to law, and obtain a writ of *Superfedeas* thereon, the defendant may proceed to execution notwithstanding such writ of error. *Mich. 28 Car. 2.* If here bail required, bail to be put in within four days. Aliter execution.

In all cases where bail shall be filed on writs of error, such bail shall likewise be perfected within four days after exception taken there- to; or in default thereof the clerk of the errors Bail to be perfected in 4 days after exception.

errors shall *Non pros* such writ of error.
Mich. 6 Geo. 2.

No execution for not transcribing without certificate. After a writ of error shall be duly allowed, and a *Superseas* thereupon obtained, no execution shall be made for not transcribing the record into the *King's Bench* without a certificate in writing by the clerk of the errors, that the plaintiff in such writ of error made default in transcribing the record into the *King's Bench*, according to a rule of court to be first given of course. *Mich. 28 Car. 2.*

Of perfecting bail on rule for better bail in vacation. If a rule for better bail in error is served in vacation, the plaintiff in error has not of course, till the next term to perfect his bail, but ought to justify before a judge; and if the defendant in error be not satisfied with that, then the plaintiff in error, having done every thing in his power, has until the next term to perfect his bail.

Time refused to perfect bail in error, because no real error suggested. *2 Wils. 144.*

Execution of error, tho' before notice, void. An execution sued out after a writ of error allowed is void, whether the party have notice of the writ of error or not; but if he have not notice of it, he is not punishable for a contempt, though restitution ought to be made. *Smith v. Cave, 3 Lev. 312.*

Debt on judgment after error. After a writ of error brought on a judgment in this court, an action of debt may be brought upon the judgment pending the writ of error; but then the plaintiff ought to declare on the whole matter, *viz.* of the judgment in this court, of the removal by writ of error, and that the judgment is still in full force, *prout*
palet

patet per record' inde in banco regis. Gale v. Till, 3 Lev. 396. V. antea fol.

If an action of debt be brought on a judgment pending a writ of error in the original action, the plaintiff may proceed to judgment, but not to take out execution till the writ of error be determined. *Coe and Allam, have execution Praet. Reg. C. P. 55. Trin. 9 Geo. 1. Jackson and Duckett, Praet. Reg. C. P. 54. Rep. 83. Cas. of Praet. C. P. 32. Hil. 13 Geo. 1.* But the plaintiff may take out execution notwithstanding the writ of error, if the defendant does not apply to the court to stay execution. *Humphreys and Daniel, Barnes 202. Rep. and Cas. of Praet. C. P. 129. Praet. Reg. C. P. 183. Pasf. 9 Geo. 2. The plaintiff, pending a writ of error, cannot have an Exigent post ca. sa. on the original judgment. Spinks and Bird. Pasf. 10 Geo. 2. Barnes 314. Praet. Reg. C. P. 184.*

If a writ of error be brought on a judgment, and the plaintiff brings an action of debt on the recognizance against the bail in the original action, pending the writ of error, the court will stay the proceedings till the writ of error is determined; for if the plaintiff might proceed to judgment against the bail, they would be thereby deprived of an opportunity of surrendering the defendant. *Newman and Butterworth, Hil. 8 Geo. 2. Barnes 66. Rep. and Cas. of Praet. C. P. 112. Praet. Reg. C. P. 82.*

If a writ of error be brought on a judgment in this court, and the chief justice dies [before he has returned the writ of error] where by

If writ of error abates by death of chief justice, execution

tion with leave of the court. whereby the writ is abated, execution may be taken out with leave of the court; but if

taken out without leave, it will be set aside, and restitution ordered. *Cranborne and Quenel, Thorntou and Hays, Pract. Reg. C. P. 195. Barnes 201. Hil. 9 Geo. 2.*

Of transcribing.

At the return of the writ of error a rule must be given with the clerk of the errors, by the defendant in error, for the plaintiff to transcribe the writ of error into the *King's Bench*, which rule will be out in eight days after service thereof on the plaintiff in error, or his attorney; and if the record be not transcribed in eight days, the clerk of the errors will sign a *Non pros*. The rule to transcribe may be served on the plaintiff in error, and need not be served on his attorney.

What time the clerk of the errors takes to transcribe.

If the writ of error be returnable the first day of a term, the clerk of the errors takes the whole term to transcribe the record in, and does not carry in the transcript until the last day of that term; and if the writ of error be returnable on any other return than the first return of a term, he takes the whole subsequent vacation to transcribe in, and carries in the record on the first day of the next term.

Though writ of error be *non-prossed*, for want of transcribing record, yet the bail, being bound to prosecute writ of error with effect, will be liable. *Barnes 499.*

After the transcript is carried in, the whole proceedings are in the *King's Bench*. See the *Attorney's Practice in the Court of King's Bench*.

Leave to file warrant of attorney after

The plaintiff had obtained judgment in *Trin. 1726*. Error was brought in *Trin.*

1727, and the want of a warrant of attorney had been assigned for error, and a *Certiorari* taken out and returned, that there was no warrant of attorney; whereupon the plaintiff applied to the court for leave to file his warrant of attorney. After hearing *Chefshyre pro Quer.* and *Whitaker and Raby pro Def.* and great consideration, the court refused to let the warrant of attorney be filed. *Nipson and Quillier, Mich. 1 Geo. 2.*

The plaintiff has brought a *Scire facias* on a recognizance of bail, and had filed a warrant of attorney *de pl'ito transgr. super casum super scire facias*; error was brought, and the want of warrant of attorney assigned for error, and a *Certiorari* returned, that there was no warrant of attorney. The plaintiff moved to amend the warrant of attorney, by making it *de placito debiti super Sci. fa.* and upon hearing *Brantbwayte pro Quer.* the court gave leave to amend. *Societas Belgica ad indos occidentales negotians v. Henriques & al, Pract. Reg. C. P. 25. Pasf. 1 Geo. 2. 2 Brownl. 167. 2 Coke 135.*

After error brought the record was ordered to be amended, by inserting at the top of the roll *from the day of St. Martin in fifteen days, in the ninth year, &c.* The cause of action having arose in *Michaelmas* term. *Deacon and Vivian, Pasf. 9 Geo. 2. Barnes 7.*

Judgment roll amended after error brought, and *In nullo est erratum* pleaded, by striking out the words *ought to*, and inserting the word *do*, the judgment being, that the plaintiff *ought to recover*, instead of *do recover*: This

error brought
denied.
Pract. Reg.
C. P. 197.

Warrant of
attorney a-
mended after
error brought.

Record amend-
ed after error
brought.

The like on pay-
ment of costs,
if plaintiff in
error did not
proceed.

amendment was ordered without costs, if the plaintiff in error should proceed; *aliter* costs were to be paid. *Foster and Blackwell, Pas. 10 Geo. 2. Barnes 7, 8.*

No discontinuance after error without costs.

Judgment *pro Quer.* on demurrer, but not entered on record. Error brought, the court refused to let the plaintiff discontinue without paying the costs on the writ of error. *Pym and Warren, Mich. 6 Geo. 2. Barnes 169.*

Said that a *Scire facias* on a recognizance of bail upon a writ of error need not set forth the condition of the recognizance. *Hil. 17 Geo. 2. C. B. Malland v. Jenkins. Barnes 93.*

Easter Term following.

	Out of Pocket			Agent			S. A. J. J.		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Rule to alledge diminution *	0	2	4	0	2	4	0	2	4
Copy and service	0	0	0	0	1	0	0	2	0
Term fee	0	0	0	0	3	4	0	6	8
Letters and messengers	0	0	0	0	1	0	0	2	0

Michaelmas Term following.

Attending several times to see if errors assigned	0	0	0	0	1	8	0	3	4
Copy assignment of errors	0	0	0	0	1	0	0	2	0
Plea in <i>nullo est erratum</i>	0	0	0	0	1	6	0	3	0
Copy to file, duty, and paid	0	2	6	0	3	6	0	4	6
Paid setting down cause for affirmance	0	9	6	0	9	6	0	9	6
Copy paper book, fo. 60	0	0	0	0	10	0	1	0	0
Attending to examine same	0	0	0	0	3	4	0	6	8
Attending court on affirmance	0	0	0	0	3	4	0	6	8
Notice of taxing costs	0	0	0	0	1	0	0	2	0
Bill of costs, and copy	0	0	0	0	1	0	0	2	0
Attending taxation, and to examine <i>remittitur</i>	0	0	0	0	3	4	0	6	8

* Rest of money paid for this rule is included in the charge for copy of writ and record.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Paid for assurance	3	18	6	3	18	6	3	18	6
Entry thereof and <i>remittitur</i>	0	0	0	0	2	8	0	5	4
Entry on roll	0	0	0	0	1	4	0	2	8
Entering and examining same at Treasury	0	0	0	0	3	4	0	6	8
Paid clerk there	0	3	6	0	3	6	0	3	6
Term fee	0	0	0	0	3	4	0	6	8
Letters and messengers	0	0	0	0	1	0	0	2	0

If Writ of ERROR should happen to be *non-prossed* for Disobedience to any of the Rules, the Items of Disbursements and Fees will be nearly as follow.

Trinity Term, 1778.

No Diminution being alledged, or no Errors being assigned, as Case may be.

Attending court, and motion for <i>Non pros</i>	0	0	0	0	3	4	0	6	8
Paid	4	0	0	4	0	0	4	0	0
Bill of costs and copy	0	0	0	0	1	3	0	2	6
Attending taxation, and to examine <i>remittitur</i>	0	0	0	0	3	4	0	6	8
Entry, and engrossing same on roll, attending, &c.	0	0	0	0	4	6	0	9	0
Paid clerk of Treasury	0	3	0	0	3	0	0	3	0
Term fee, letters, &c.	0	0	0	0	4	4	0	8	8

F f 4

Replevin.

Replevin.

THIS suit may be by original out of Chancery returnable in this court, but is most usually commenced in the county court, and removed into this court by writ of *Recordari facias loquelam* commonly called a *Refalo*, taking its name from the first syllable of each word in the name of the writ, viz. *Recordari facias loquelam*; but if the suit be first commenced in an inferior court of record, as in *London*, then it must be removed into this court by writ of *Certiorari*, for the *Refalo* doth not go to a court of record, because there the suit is already recorded. In order for a *Refalo* you make out a *Præcipe* to the curfitor of the proper county in the following form, viz.

Effex, *R EFALO* for (either plaintiff or to wit. defend ant, naming them) of a plaint between *Richard Knightsbridge* against *John White* and *William Sell*, for taking and unjustly detaining the cattle, goods and chattels of the said *Rubard*.

*Returnable from Easter day
in 15 days.*

This *Præcipe* you deliver to the curfitor who will make out the writ, and then you carry it to the under-theriff who will return it.

The suit may be removed either by the plaintiff or defendant.

If

If the plaintiff in replevin brings the *Recordari facias loquelam*, he files it, when returned, with the filacer of the county, and gives a rule for the defendant to appear, and in default thereof may have a *Pone, Distringas, &c.*

Of proceeding if Refalo brought by plaintiff.

If the defendant brings the *Recordari facias loquelam*, he also files it, when returned, with the filacer, and gives a rule for the plaintiff in replevin to declare, and in default of a declaration may have a writ of return *Habend.*

If by defendant.

If the defendant doth not file the *Recordari facias loquelam* at the day of the return, or at least on the appearance day of the return, he must give the plaintiff's attorney notice of filing it; it is said there is no occasion to call for a declaration; however, it is but fair practice and the safer method, to call upon the plaintiff's attorney for the declaration.

Where notice of filing Refalo, and calling for a declaration necessary.

If the defendant brings the *Refalo* and doth not get it returned, and file it within two terms, the plaintiff may have a certificate thereof from the filacer, and thereupon the curfitor will make him out a writ of *Procedendo*, upon which he may proceed in the court below.

When Procedendo shall go.

See the second volume for declarations, &c. in replevin.

The particular place of taking the goods ought to be mentioned in every declaration in replevin.— And the plea of *Cepit in alio loco* is a plea in bar, and not in abatement, and

and doth not require an affidavit, nor to be pleaded in four days after delivering the declaration.

Motion was made to set aside judgment, signed by defendant in replevin, for want of a plea in bar: case was, that defendant had pleaded an avowry, to which plaintiff put in a plea in bar; afterwards defendant obtained order on summons to amend avowry, on payment of costs; both which being done, defendant gave new rule for plaintiff to plead in bar *de novo*; and then demanded plea in bar afresh; plaintiff paid no regard thereto; whereupon defendant signed judgment, which plaintiff prayed might be set aside; question put by court was, how the practice stood in this case? which was answered by Mr. prothonotary *Dickins*, to be, that after rule to plead in bar *de novo*, and demand made, and no such plea by plaintiff, old plea in bar stood as before, whereto defendant ought to have replied, instead of signing judgment; which was therefore set aside. *Grose* for plaintiff; *Walker* for defendant. *Hil.* term, 17 *Geo.* III. C. B. A. D. 1777. MS. notes.

A writ of second deliverance is in the nature of a *Superfedeas* to the return *Habend.* if brought before the return *Habend.* be executed.

Double costs not allowed on a nonsuit in *replevin*, where plaintiff declared for taking and detaining an ox, and defendant avowed the taking as a seizure for an heriot custom, claiming no right to distrain; *aliter* had it been

been for heriot service, for that cattle are distrainable. *Barnes* 148.

Nonfuit in replevin; avowant executed a writ of *ingress*, after a writ of second deliverance, and good. *Wilf. Rep. C. B.* 116. *Barnes* 426.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Essex*, greeting. We command you, that in your full county you cause the plaint to be recorded, which is the same county, without our writ, between *Richard Knightsbridge*, and *John White*, and *William Sell*, of the cattle, goods and chattels of the said *Richard*, taken and unjustly detained as it is said, and that you have the said record before our justices at *Westminster*, from *Easter* day in fifteen days under your seal, and the seals of four lawful knights of the same county, of such as shall be present at the said record, and that you prefix the same day to the parties, that then they may be there ready to proceed in the said plaint as shall be just; and have you there the names of the said four knights, and this writ. Witness ourself at *Westminster* the sixth day of *March* in the seventh year of our reign. Let execution be done of this writ, if the said *Richard* desire it, otherwise not.

	s. d.
Duty	2 0
Curfitor	2 6
	<hr/>
	4 6

Browne;

By

The return.

By virtue of this writ to me directed in my full county court, held for the county of *Essex* or *Chelmsford* in the county aforesaid, the one and thirtieth day of *March* in the year within mentioned, I caused the plaint between the parties within named to be recorded, and have that record ready before the justices of our lord the king at *Westminster* at the day within mentioned, under my seal, and the seals of *Richard Cox, Charles Tabor, Henry Burdock, and Samuel Barwick*, four lawful knights of the same county, who were present at the recording the said plaint; and I have prefixed the same day to the said parties, that they be then before the said justices of our sovereign lord the king at *Westminster*, to proceed therein according to justice as by the same writ I am commanded.

The rest of the execution of this writ appears in a certain schedule to the said writ annexed.

The answer of

James Hannel, esq; sheriff.

Essex, **A**T my county court held at *to wit. Chelmsford* in the county aforesaid, the fifth day of *February* in the year of our Lord 1739, (among other things) it is thus recorded.

Richard Knightsbridge complains of *John White*, and *William Sell*, of a plea of taking and unjustly detaining of his cattle, goods and chattels, &c.

Pledges

Pleges to prosecute, { *John Mansfield of Ho-*
 sier Lane, London,
 watch-spring maker.
 { *John Besuth of Strat-*
 ford Langthorne in
 the county of Essex,
 { *gardener.*
 Thomas Bowes, esq; sheriff.

GEORGE the third, by the grace of *Pont in re-*
 God, of *Great Britain, France, and Ireland,* *pl. vin.*
 king, defender of the faith, &c. To the
 sheriff of *Essex*, greeting. Put by sureties
 and safe pledges, *John White* and *William*
Sell, that they be before our justices at *West-*
minster, from the day of the holy *Trinity* in
 three weeks, to answer to *Richard Knight-*
bridge of a plea wherefore they took the
 cattle, goods and chattels of the said *Richard*,
 and them unjustly detained against
 gages and pledges, as he saith, and to shew,
 wherefore they have not appeared in our
 court before our justices at *Westminster*, from
Easter day in fifteen days last past, as the
 day prefixed to them; and have you there
 the names of the pledges and this writ.
 Witness Sir *William De Grey*, knt. at *West-*
minster, the 29th day of *May* in the 7th
 year of our reign.

6 June 1777.

Boycott.
R. by R.

COSTS

**COSTS for PLAINTIFF in RE-
PLEVIN.**

Hilary Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Instructions and warrant to sue	0	0	0	0	2	2	0	4	4
Attending execution of the replevin bond	0	0	0	0	1	8	3	4	
Paid sheriff for same	1	1	0	1	1	0	1	0	

Easter Term following.

Paid entring plaint	0	3	8	3	8	0	3	8
Attending county court	0	0	0	1	8	0	3	4
Searching for <i>Recordari</i>	0	0	0	1	8	0	3	4
Declaration fo. 3	0	0	0	1	6	0	3	0
Engrossing duty, war- rant, &c.	0	0	3	0	1		1	11
Entry on Roll	0	0	0	0	0		1	0
Rule to avow	0	1	10	0	2		2	6
Searching for and draw- ing avowry	0	0	0	0	2	8	0	5
Copy avowry fo. 10	0	0	0	0	1	8	0	3
Paid advising with council thereon; and on plea in bar	0	10		0	10		0	10
Attending him	0	0		0	1		0	3
Searching								

in the Court of Common Pleas. 447

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Searching for rule to plead in bar	0	0	0	0	1	8	0	3	4
Summons to amend declaration	0	2	0	0	2	0	0	2	0
Copy and service	0	0	0	0	1	0	0	2	0
Attending thereon	0	0	0	0	1	8	0	3	4
Order, copy and service	0	2	0	0	3	0	0	4	0
Appointment to tax costs, copy, and service	0	2	0	0	3	0	0	4	0
Taxing same	0	0	0	0	1	8	0	3	4
Paid costs of amendment	0	18	0	0	18	0	0	18	0
Attending to amend declaration and to pay costs taxed	0	0	0	0	1	8	0	3	4
Term, fee, letters, &c.	0	0	0	0	3	6	0	7	0

Trinity Term, 1778.

New rule to avow	0	1	10	0	2	2	0	2	6
Searching for and demanding avowry	0	0	0	0	2	8	0	5	4
Copy avowry, fo. 110	0	0	0	0	1	8	0	3	4
Searching for rule to plead in bar	0	0	0	0	1	8	0	3	4
Plea in bar, fo. 6	0	0	0	0	3	0	0	6	0
Fee to council for signing same	0	10	6	0	10	6	0	10	6

Attending

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending him for that purpose	0	0	0	0	1	8	0	3	4
Engrossing and duty	0	0	3	0	1	3	0	2	3
Paid for entry	0	4	0	0	4	0	0	4	0
Paid for rule to reply	0	1	10	0	2	2	0	2	6
Searching for and demanding replication	0	0	0	0	2	8	0	5	4
Copy replication	0	0	0	0	0	6	0	1	0
Searching for rule to rejoin	0	0	0	0	1	8	0	3	4
Demurrer to replication, fo. 3	0	0	0	0	1	6	0	3	0
Fee to council for signing	0	10	6	0	10	6	0	10	6
Attending him thereon	0	0	0	0	1	8	0	3	4
Engrossing and duty	0	0	3	0	0	9	0	1	3
Paid entering demurrer	0	2	0	0	2	0	0	2	0
Rule to rejoin in demurrer	0	1	10	0	2	2	0	2	6
Searching for and demanding joinder	0	0	0	0	1	8	0	3	4
Term fee, letters, &c.	0	0	0	0	3	6	0	7	0

COSTS for DEFENDANT in Replevin, on
stat. 11 Geo. II. chap. 19. sect. 21.
which orders double costs to be paid
by PLAINTIFF, on his being non-
sued, &c. !

	Out of Packet			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending in <i>Bell Lane, Paddington</i> , and making a distress on the goods of <i>James Agate</i> the tenant, notice thereof with inventory	0	0	0	0	10	6	1	1	0
Two fair copies of inventory, to serve and keep	0	0	0	0	3	4	0	6	8
Searching at sheriff's office whether replevin brought, when found there was	0	0	0	0	1	8	0	3	4
Paid man for four days possession and board 3s. 6d. a day*	0	14	0	0	14	0	0	14	0
<i>In sheriff's court.</i>									

* If man does not find himself in board, he is intitled to only 2s. 6d. a day.

Trinity Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Instructions and warrant to defend	0	0	0	0	2	2	0	4	4
Entering appearance	0	2	0	0	3	8	0	5	4
Searching for bail	0	0	0	0	1	8	0	3	4
Letters, &c.	0	0	0	0	0	6	0	1	0
<i>In this court</i>									

Michaelmas Term, following.

Precipe for <i>Re. Fa. Lo.</i> to remove plaintiff and copy	0	0	0	0	0	6	0	1	0
Paid curfitor for same	0	4	6	0	4	6	0	4	6
Fee thereon	0	0	0	0	1	8	0	3	4
Attending sheriff there- with, and for return	0	0	0	0	1	8	0	3	4
Paid sheriff for return, and for summoning defendant	0	14	6	0	14	6	0	14	6
Returning and filing <i>Re. Fa. Lo.</i> with fi- lacer	0	2	0	0	2	6	0	3	6
Entering appearance	0	2	4	0	4	0	0	5	10
Rule to declare	0	1	10	0	2	2	0	2	6
Letters, &c.	0	0	0	0	0	6	0	1	0

Hilary

Hilary Term, 1779.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Searching for and demanding declaration	0	0	0	0	2	8	0	5	4
Judgment of <i>Non-pros.</i>	0	0	0	0	1	6	0	3	0
Paid for stamp	0	5	1	0	5	1	0	5	1
Entry on roll	0	0	0	0	0	6	0	1	0
Paid prothonotary signing judgment	0	0	0	0	6	0	0	6	0
Writ of <i>return. habeas.</i>	0	3	2	0	5	10	0	8	6
Attending sheriff there-with, and for return	0	0	0	0	1	8	0	3	4
Paid for return, " <i>elongata</i> "	0	3	4	0	3	4	0	3	4
Paid filing same	0	1	0	0	1	0	0	1	0
Term fee (<i>Non-pros</i> signed)	0	0	0	0	3	4	0	6	8
Letters, &c.	0	0	0	0	1	0	0	2	0

Proceedings on Replevin Bond.

Easter Term, 1778.

Instructions and war-									
rant to proceed on									
recognizance of bail	0	0	0	0	2	2	0	4	4
Attending sheriff for									
licence to proceed,									
	G	g	2						and

	Out of Pocket			Agent			Attorn. v		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>a.</i>
and signing his indemnity	0	0	0	0	1	8	0	3	4
Paid for same	0	6	8	0	1	8	0	6	8
Copy replevin bond, folio 8.	0	0	0	0	0	8	0	1	4
<i>Capias</i>	0	4	2	0	7	7	0	11	0
Many journies in orde. to serve same	0	0	0	0	2	6	0	5	0
<i>Cap.</i> by contin.	0	3	5	0	6	7	0	9	8
Endeavoring to serve same	0	0	0	0	2	6	0	5	0

Fines,

Fines.

FINES are used as common assurances for the conveyance of lands, and are of several sorts; viz.

1. *Sur cognizance de droit, come ceo que il ad de son done.*
2. *Sur done, grant et rendre.*
3. *Sur cognizance de droit tantum.*
4. *Sur concessit.*
5. *Sur release.*

These are for several purposes, but the first is the most usual, and of that only we shall treat here, the rest being but seldom made use of.

Fines are taken either with or without a *Method of taking a fine.*
Dedimus potestatem.

Without a Dedimus.

1. In court, or
2. By the chief justice out of court.

By Dedimus.

1. By any of the judges, or by a serjeant at law (and in this case a *Dedimus* may be taken out after the caption, but before the judge or serjeant will return the caption;) or
2. By commissioners named in the *Dedimus*, and therefore in this case the *Dedimus* must be taken out before the caption.

Of passing a fine in court.

In this case you get the writ of covenant before the caption, and for that purpose you make out a *Præcipe* to the curfitor in the following form, according to the nature of the case.

Præcipe for writ of covenant.

Middlesex, *to wit*, Command *A. B.* gentleman and *E.* his wife, that justly, &c. they perform to *C. D.* the covenant made between them, of one messuage and one garden, with appurtenances in *B.* and unless, &c. *Returnable*, &c.

After you have got the writ of covenant, for which you pay 7*s.* 6*d.* you ingross the *Præcipe* and concord in parchment in the following form.

Præcipe and concord.

Middlesex, *to wit*, Command *A. B.* gentleman, and *E.* his wife, that justly, &c. they perform to *C. D.* the covenant made between them, of one messuage and one garden, with the appurtenances in *B.* and unless, &c.

And the agreement is such, *to wit*, that the aforesaid *A.* and *E.* have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said *C.* as those which the said *C.* hath of the gift of the aforesaid *A.* and *E.* and these they have remised and quit-claimed from them
the.

the said *A.* and *E.* and the heirs of the said *A.* to the aforesaid *C.* and his heirs for ever: And moreover the said *A.* and *E.* have granted for them and the heirs of the said *A.* that they will warrant to the aforesaid *C.* and his heirs, the aforesaid tenements, with the appurtenances, against them the said *A.* and *E.* and the heirs of the said *A.* for ever: And for this, &c.

You then go with the *concess* to *Westminster*, and give the writ, *Praeceptum* and concord, to a serjeant's clerk; and he will get it passed for you; the wife must be examined by one of the judges, as to her free consent, without coercion of her husband.

If the fine be to be acknowledged before *Before the chief* the chief justice, a judge, or serjeant at law, *justice, a judge,* you ingross the *Praeceptum* and concord on *or serjeant.* parchment, as before, and make another copy *of* them on paper, and write under each of them on the left hand side thus:

Taken and acknowledged the
day of in the
eighth year of the reign of
our sovereign lord *George* the
third, now king of *Great*
Britain, &c. Before me.

The concord ingrossed on parchment, and the paper copy thereof, must be signed by the cognizors; you then go with the cognizors before the chief justice, judge, or serjeant, who will take the caption, examining the wife as before; the paper copy is kept by

The Attorney's Practice

the clerk of the chief justice, judge, or serjeant; you pay for the caption 12 s. 6 d.

If the fine be taken by a judge (not being the chief justice,) or by a serjeant, you sue out a *Dedimus potestatem*, and for that purpose you make out a *Præcipe* for the sheriff, as followeth :

Middlesex, *to wit*, Command A. B. gentleman, and E. his wife, that justly, &c. they perform to C. D. the covenant made between them & C. D. by messuage, and one garden, with the appurtenances, in B. And unless, &c.

De. po. To [naming the judge or serjeant:] You pay for this *Dedimus* 10 s. 8 d. And deliver it to the judge, or serjeant's clerk, who will get it returned for you."

If the fine be to be taken by special commissioners, you make a *Præcipe* for the sheriff in the following form, according to the nature of your case.

Essex, *to wit*, Command C. K. and L. his wife, that justly, &c. they perform to D. B. gentleman, the covenant, &c. of twenty acres of land with the appurtenances in C. And unless, &c.

J. B. knight.
R. R.
C. M.
S. W.
J. W.

De. Po. directed to

You pay for this *Dedimus* 1 l. 5s. 8d.

Then you ingross the *Præcipe* and concord in parchment, in this form :

Essex, *to wit*, Command C. K. and L. his wife, that justly, &c. they perform to D. B. the covenant made between them of twenty acres of land, with the appurtenances in C. And unless, &c.

And the agreement is such, that is to say, that the aforesaid C. and L. have acknowledged the aforesaid tenements, with the appurtenances, to be the right of him the said D. as those which the said D. hath of the gift of the aforesaid C. and L. and those they have remised and quit-claimed from them the said C. and L. and the heirs of the said C. to the aforesaid D. and his heirs, for ever. And moreover the said C. and L. have warranted for them and the heirs of the said C. that they will warrant to the aforesaid D. and his heirs, the aforesaid tenements, with the appurtenances, against them the said C. and L. and the heirs of the said C. for ever. And for this, &c.

Taken and acknowledged the
day of in the
eighth year of the reign of
our sovereign lord George the
third, now king of Great
Britain, &c. Before

Any two of the commissioners may take the fine, examining the wife separate and apart from the husband, as to her free consent,

sent, without coercion from her husband, to pass the fine, and part with her interest in the lands, telling her the consequence of her acknowledging the fine; the *Præcipe* and concord should be read to the cognizors, and then signed by them, and the commissioners sign the caption and then annex the *Præcipe* and concord to the *Dedimus*, and the commissioners subscribe their names to the return, which is to be indorsed on the back of the *Dedimus* in the following words, viz.

The execution of this writ appears in a certain schedule hereto annexed.

Vide postea the rule; as the affidavit necessary of the due taking of a fine by *Dedimus*, and a judge's *Allocatur* thereon.

As to passing the fine through the offices; you carry the writ of covenant to the *Alienation-Office* in the *King's Bench Walks* in the *Temple*, to compound for the fine, for which the commissioners have fixed rules, according to the parcels in the writ; if a commissioner be present, you compound for the fine immediately, and pay the fine and the fees, the latter generally about 2s. The clerk keeps the writ generally two days to enter it in the office-books; having got the writ from the *Alienation-Office*, you ingross a warrant of attorney on parchment in the following form, according as your case requires.

*Michaelmas term in the seventh year of
king George the third.*

Essex, *D.* B. putteth in his place *A. B.* his
to wit. attorney, to prosecute a writ of
covenant against *C. K.* and *L.* his wife of
lands in *C.*

This warrant you file with the clerk of
the warrants in *Clifford's Lane* for which you
pay 4*d.* and 4*d.* *every Post terminum* ;
for the warrant of attorney must be of that
term in which the writ of covenant was re-
turnable.

By *stat. 32 Geo. 2. c. 14. sect. 1.* On eve-
ry writ of covenant which shall be sued out
for the passing of fines in the Common Pleas
at *Westminster*, the officer whose duty it is to
set and indorse the pre-fine payable thereon,
shall at the same time set the usual post-fine,
and indorse the same on the back of the said
writ, together with his name or mark of of-
fice, in like manner as the same are now in-
dorsed at the king's silver office, which post-
fine shall be forthwith paid to the receiver of
pre-fines at the alienation office, with 4*d.*
as his fee for receiving the same, instead of
the fee of 4*d.* charged on lands and heredi-
taments, and payable to sheriffs, bailiffs,
and others, on discharging the same, by 3
Geo. 1. cap. 15. which fee of 4*d.* by the said
act granted, after the first day of *Trinity*
term 1759, shall cease; and such receiver
shall indorse, upon the back of every such
writ

writ of covenant, one mark of office, as is now used by him on the receipt of pre-fines at the alienation office, with the name of such receiver, and the sum received as the post-fine, which mark of such receiver shall discharge the manors, lands and hereditaments comprised in the said writ of covenant, and the cognizees named therein.

By *stat. 2.* The officer or clerk of the king's filix office, or his deputy, shall continue to enter every fine upon record in the way hitherto used, and make the same entries, and put thereon the same indorsements with the same mark, and in like manner as has hitherto been the practice of the said office in passing of fines; and no fine, until the same be marked with the sum to which the post fine amounts in the king's filix office, shall be effectual in law.

By *stat. 3.* Where no pre fine is payable on any writ of covenant, (*viz. where the lands are under the yearly value of five marks*) the officer at the alienation office, whose duty it is to set the pre-fines, shall set on every writ of covenant brought to the said alienation office, on which no pre-fine is payable, a post-fine of 6s. 8d. and shall indorse such post-fine of 6s. 8d. on every such writ of covenant with his name and mark of office, as it hath been usual; and every such post-fine of 6s. 8d. shall be paid to the receiver of the alienation office, before the writ of covenant on which no pre-fine is payable, be passed at the alienation office; and the receiver, on payment of the said 6s. 8d. shall indorse

indorse and mark every such writ of covenant; as other writs of covenant are by this act directed to be indorsed.

By *sect. 4.* The officer or clerk of the king's silver office, or his deputy, after the first day of *Trinity* term 1759, shall not receive any writ of covenant, unless it appear by the mark and indorsement of such receiver, that the post-fine has been paid.

By *sect. 5.* If after the payment of such post-fine, the writ of covenant by the death of any of the parties, or other cause, be prevented from passing through the several other offices, so as the said fine is not completed; then the said receiver shall repay to the cognizees, or their attorney, on producing and filing with him the said writ of covenant, every such sum as has been before by him received for the post-fine; and such writ of covenant so remaining filed with such receiver shall be a discharge to such receiver.

By *sect. 11.* This act shall not alter the operation of any fine, which after the first day of *Trinity* term 1759 shall be levied in the Common Pleas at *Westminster*, or the course of passing fines in that court, otherwise than by this act directed.

You then carry the writ of covenant to the office of the *Custos Brevium*, in *Brick Court* in the *Temple*, to be entered, and three days after you fetch it away, carry then with you the concord and *Dedimus* (if any) to have the proclamations indorsed; you pay

pay here 3 s. 8 d. and 1 s. 8 d. for every *Post terminum*, if any.

Then annex to the writ of covenant the concord and *Dedimus* (if any), and leave them at the king's silver office in *Old Crown-Office Row* in the *Temple*; you pay here 1 s. 8 d. for the caption, and 4 d. for every other caption, if more than one, and fetch the writ, &c. from this office the third day after you left it.

Then you carry the writ, concord, &c. to the chirographer's office, to make the indentures; which you have in about a week's time.

WHEREAS by a rule of this court, made in the thirteenth year of the reign of his late majesty king *George*, it was ordered, that no fine whatsoever taken and acknowledged before any commissioners, by virtue of a writ of *Dedimus potestatem*, &c. them directed, be allowed to pass, unless some person present when such fine was taken and acknowledged did personally appear before the lord chief justice, or some other justice of this court, and was examined upon oath touching the due execution thereof, and particularly whether such person knew the parties acknowledging such fine; which rule has been found by experience to be attended with inconveniencies, and has not answered all the good purposes for which it was intended; for remedy thereof, and the better to ascertain the practice for the future,

What affidavit necessary of the due execution of a fine.

It is ordered, that, instead of an oath made *viva voce* of the due acknowledgment of such

such fines, an affidavit or affidavits in writing on parchment shall be made and annexed to every fine so taken as aforesaid, in which affidavit or affidavits the person or persons making the same shall swear, that he or they knew the party or parties acknowledging such fine; that the same was duly signed and acknowledged; that the party or parties acknowledging, and also the commissioners taking the same, were all of full age and competent understanding; that the femes covert (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same, and that the conusor or conusors, and every of them, knew the same to be a fine to pass his, her, or their estate or estates; which fine, together with such affidavit or affidavits annexed, shall be transmitted to the said lord chief justice, or some other justice of this court for his *Allocatur* thereon, and such affidavit or affidavits shall remain annexed to such fine, and be left with the same in the proper office. And it is ordered, that all and every such affidavit and affidavits as aforesaid, except where the person or persons at the time of their acknowledging the fine are in *Ireland*, or some other parts beyond the seas, shall be made by some attorney or attornies of the courts at *Westminster Hall*, or of the great sessions in *Wales*, or of the county palatine of *Chester*, *Lancaster* and *Durham*, and shall be sworn before a person duly authorised to take affidavits in this court. *Hil.*
17 Geo. 2. *The*

The form of an affidavit of the due execution of a fine.

In the Common Pleas.

A. *B.* of ——— in the county of ——— one of the attornies of his majesty's court of ——— and one of the commissioners named in the writ of *Dedimus potestatem*, for taking the acknowledgment of the fine hereunto annexed, maketh oath and saith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conusors named in the said fine, and that the same was duly signed and acknowledged by them before this deponent and *J. K.* gentleman, the other commissioner named in the said writ; and that the said *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and also this deponent and the said *J. K.* were at the time of taking and acknowledging the said fine all of full age and competent understanding. That the said *E.* and *H.* we solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the said fine, and that the said conusors, and every of them, knew the same to be a fine to pass his, her, or their estate and estates.

A. B.

Sworn at ——— in the county
 of ——— the ——— day of
 ——— in the year of our
 Lord ——— before me

L. M. one of, (&c.)

Or

Or thus, if the affidavit is not made
by a commissioner.

In the Common Pleas.

A. *B.* of — in the county of — one of
the attornies of the court of — maketh oath and faith, that he knows *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, the conusors named in the fine hereunto annexed, and that the said fine was duly signed and acknowledged by them in this deponent's presence, and that they the said *C. D.* and *E.* his wife, and *F. G.* and *H.* his wife, and also *J. K.* and *L. M.* gentlemen, the commissioners taking the same fine, were at the time of taking thereof all of full age, &c. as in the former.

If there be only one conusor and his wife,
say — and each of them —.

~~affidavit made~~ *Trin. 26 & 27 Geo. 2. reciting the last rule of Hil. 17 Geo. 2. and that the same had been found by experience to have answered many, but not all the good purposes for which it was intended: To make therefore the same more effectual and complete, and the better to ascertain the practice for the future;*

It is ordered that in the affidavit, or affidavit, made in pursuance of such rule, the person or persons, so making the same, shall not only swear as they are directed by the said rule, but also that the fine was duly

Vo. I.

H h

signed

*Further rule
thereon.*

signed and acknowledged, upon the day and year, or days and years, mentioned in the caption; and if there be any rasure or interlineation in the body or caption of such fine, that such rasure or interlineation was made before the party or parties signed the said fine, and before the caption was signed by the commissioners: Which affidavit, or affidavits, shall be annexed to the fine, and shall be transmitted to the said lord chief justice, or some other justice of this court, for his *Allocatur* thereon, and shall remain annexed to such fine, and be left with the same in the proper office, as is directed by the said rule.

An addition to be made to the former affidavit.

AND this deponent further saith, that the said fine was duly signed and acknowledged, upon the day and year mentioned in the caption, (or upon the several days and year, or years, respectively mentioned in the captions, if there happens to be more captions than one;) and that the rasure or interlineation (razures, or interlineations) in the body (or in the caption, or captions) of such fine (*as the case shall happen*) was (or were) made before the party (or parties) signed the said fine, and before the caption (or captions) was (or were) signed by the commissioners.

A fine

A fine was taken before *Prentice* an attorney, and *Prentice* a tradesman as commissioners; *Prentice* the attorney died without having made an affidavit of the acknowledgment of the fine. One of the cognizors became bankrupt, absconded, and did not surrender within the time limited by the statute. Ordered that the fine should pass on affidavit of the due acknowledgment thereof by *Prentice* the tradesman. *Trin.* 27, 28 *Geo.* 2. *Barnes* 217. *Say* against *Smith* and others.

Writ of covenant tested first day of *Easter* term, viz. 1 *May* 1754.

Fine taken by *De. po.* 13 *May*.

Writ of covenant returnable 19 *May*.

Compounded and pre-fine paid between 17 & 20 *May*.

Mary Nunn one of the cognizors died 27 *May*.

After passing the return, warrant of attorney and *Custos brevium* offices, the writ was brought to the king's silver office on 11 *June*, and the clerk there then entered the king's silver or post-fine in his book, and on the writ of covenant.

A *Caveat* to prevent the completing this fine was brought to the king's silver office on 13 *June* (before the record was made up in form).

The court utterly exploded the notion, which had prevailed, undoubtedly by mistake, that the king's silver is the pre-fine or fine for licence to alienate; certainly it is not; the king's silver is the post-fine or fine

for licence to accord. 2 *Inst.* 411. *Dyer* 246. The return of the writ of covenant is agreed to be in the life-time of *Mary* the cognisor; and from that time the crown has a right to the post-fine, which was entered at the king's silver office before any *Caveat* against it; the making up the record in form is certainly a ministerial act, not necessary to be done previous to the *Caveat*; the entry by the clerk of the king's silver as aforesaid is sufficient. (2 *Ro. Ab.* 19. *Q. p.* 1. in point.) *Pass.* 28 *Geo.* 2. *Barber* plaintiff against *Henry Nunn* and *Mary* his wife and others deforcients. *Barnes* 218.

Fine taken beyond sea not signed by the parties, ordered to pass.

A fine taken at *Naples* ordered to pass, though not signed by the parties, on affidavit that it was duly acknowledged; that the parties were of full age and good understanding; that the feme covert was examined apart from her husband and freely consented. The fine being taken beyond sea is not within the late rule requiring an affidavit, and the signing a fine by the cognisors is not an essential part. By *Willes*, ch. justice, and *Clive* just. 27 February 1756. *Flew v. Wood* plaintiff, *Calender* and wife and others deforcients. *Barnes* 219, 220.

A fine amended in the name of a parish, which was levied in the reign of queen *Anne*. 3 *Wils. Rep.* 58.

Fine amended by deed of uses, adding a vill. *Barnes* 24.

Proceedings to perfect a fine stayed, and former proceedings vacated, wife of one of the cognizors, dying before return of writ of

of covenant, on motion, without putting parties to bring writ of error; the concord is to be made at return of writ of covenant, if party die. before that day, there can be no agreement, all is void. *Barnes* 220, 221.

A fine from three conufors and the wives of two of them, to two conusees, upon two writs of covenant. 1. Of messuages, cottages, barns, stables, gardens, orchards, land, meadow, pasture, wood, common of pasture, and free fishery. 2. Of messuages, cottages, barns, stables, gardens, orchards, land, meadow, pasture, wood, furze and beath.

Norfolk, **C**ommand *A. B. gent. and C. to wit,* his wife, *D. E. gent. and F. his wife,* and *G. H. gent.* that they justly, &c. perform to *J. K. esq;* and *L. M. gent.* the covenant made between them of four messuages, six cottages, four barns, six stables, six gardens, six orchards, four hundred acres of ~~land~~ ~~and~~ ~~four~~ hundred acres of meadow, ~~four~~ hundred acres of pasture, forty acres of wood, common of pasture for all cattle, and free fishery with the appurtenances in *N. O. and P.* And unless, &c.

Suffolk, *to wit,* Command the same that they justly, &c. perform to the same the covenant made between them of six messuages, four cottages, five barns, six stables, six gardens, six orchards, four hundred acres of land, two hundred acres of meadow, two

hundred acres of pasture, thirty acres of wood, and forty acres of furze and heath, with the appurtenances in *Q. R. &c.* and unless, *&c.*

And the agreement is such, to wit, that the aforesaid *A.* and *C. D.* and *F.* and *G.* have acknowledged the aforesaid tenements, common of pasture and fishery, with the appurtenances to be the right of the said *J.* as those which the said *J.* and *L.* have of the gift of the said *A.* and *C. D.* and *F.* and *G.* and those they have remised and quit-claimed from themselves the said *A.* and *C. D.* and *F.* and *G.* and their heirs, to the said *J.* and *L.* and the heirs of the said *J.* for ever. *And moreover,* the said *A.* and *C.* have granted for themselves and the heirs of the said *C.* that they will warrant to the said *J.* and *L.* and the heirs of the said *J.* the aforesaid tenements, common of pasture and fishery, with the appurtenances, against them the said *A.* and *C.* and the heirs of the said *C.* for ever. *And further* the said *D.* and *F.* have granted for themselves and the heirs of the said *F.* that they will warrant to the said *J.* and *L.* and the heirs of the said *J.* the aforesaid tenements, common of pasture and fishery, with the appurtenances against them the said *D.* and *F.* and the heirs of the said *F.* for ever. *And also* the said *G.* hath granted for himself and his heirs, that he will warrant to the aforesaid *J.* and *L.* and the heirs of the said *J.* the aforesaid tenements, common of pasture and fishery, with the appur-

appurtenances against him the said G. and
his heirs for ever, and for this, &c.

Taken and acknowledged, &c. {
A. B.
C. B.
D. E.
F. E.
G. H.

are .

ILL of Disbursements and Fees on Fine passed by De. Po.

Trinity Vacation, 1778.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Perusing writings, attending for that purpose, and to settle parcels for fine	0	0	0	0	3	4	0	6	8
<i>Precipe</i> for <i>De. Po.</i> and copy for curfitor	0	0	0	0	1	6	0	3	0
<i>De. Po.</i> and fee	1	6	8	1	10	0	1	13	4
<i>Precipe</i> and concord with fair copy, fo. 4	0	0	0	0	2	8	0	5	4
Engrossing and parchment	0	0	5	0	1	9	0	3	1
Affidavit of caption, parchment duty, engrossing, and oath	0	3	9	0	5	3	0	6	9
Allowance	0	4	0	0	4	0	0	4	0
Attending judge for same	0	0	0	0	1	8	0	3	4
Writ of covenant and fee	0	7	6	0	10	10	0	14	2
Private seal	0	8	6	0	8	6	0	8	6
King's fine	4	13	4	4	13	4	4	13	4
Attending to compound	0	0	0	0	3	4	0	6	8
Alienation fees	0	4	0	0	0	0	0	4	0
Pre-fine and post-fine	7	0	0	0	0	0	0	0	0
Letters, &c.	0	0	0	0	0	0	0	2	0

Michaelmas Term following.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Returning and inrolling covenant	0	1	6	0	1	9	0	2	0
Warrant of attorney, and filing	0	0	4	0	0	10			
Keeper of writs	0	3	8	0	3	8	0	3	8
King's filer and	0	2	8	0	2	8	0	2	8
Chirographer	0	6	2	0	6	2	0	6	2
Indentures	0	6	6	0	6	6	0	6	6
Passing fine	0	0	0	0	6	8	0	13	4
Letters, &c.	0	0	0	0	1	0	0	2	0

Bill of Disbursements and Fees on Fine passed at Bar, consists of the same Items as the last, except as hereunder exprest.

Precipe' for covenant, and copy for curfitor									
Serjeant for counting fine at bar	0	2	0	0	2	8		3	4
Attending court	0	0			3			6	8
Paid secondary and cryer	0	2			2			2	6
Paid king's fine	1	0			0			0	0

N. B. The rest of this bill same as last.

Recoveries.

Where the parties appear in proper person.

OF suffering a recovery where the tenant and vouchees appear in person.

You prepare a *Præcipe* on paper, according to the nature of your case, in this manner :

Cooke.

Easter term in the seventh year of the reign of king George the third.

Essex, **C**OMMAND R. R. gentleman, that to wit. he justly, &c. render to S. R. three messuages, and twenty-four acres of land (*specifying the parcels*) with the appurtenances in D. which he elaimeth, &c.

Tenant in person voucheth to warrant S. F. who in person voucheth to warrant ~~Edmund~~ Wilson.

If there be more vouchees, name them in order, naming *Edmund Wilson*, who is the common vouchee, last.

Then you go with the tenant and vouchee or vouchees (except the common vouchee) to *Westminster*, and give the *Præcipe* to a serjeant's clerk, who will get it passed at bar, and deliver it back to you.

If

If the recovery be with single voucher, you pay the serjeant's clerk 6*s.* with double voucher 8*s.* with treble voucher 10*s.* with quadruple voucher 12*s.* and if by warrant of attorney 4*s.* more. There are other fees in court amounting to about 5*s.* more, if by warrant of attorney, to 6*s.* but you may give those fees to the serjeant's clerk who will pay them for you.

You then take a copy of the *Præcipe* for the curator to make out the writ of entry in the following form.

Essex, *to wit*, Command R. R. gentleman, that he justly, &c. render to S. R. three messuages and twenty-four acres of land, with the appurtenances in D. which he claimeth, &c.

*Returnable from Easter day
in 15 days.*

You pay for the writ of entry 7*s.* 6*d.* and then get the attorney general's hand to it, for which you pay 10*s.* (this is frequently the last of all); you then go to the alienation office in the *Temple*, and compound for the fine, which for such small parcels as above is generally 6*s.* 8*d.* which you pay with the clerk's fee, generally about 2*s.* or 2*s.* 6*d.*

You then make out a writ of seisin, for the form of which *vide postea*, and having got it signed by the prothonotary and sealed, you carry that and the writ of entry to the return office, N^o. 3 in the Inner *Temple*, to
be

be returned ; for the return of each you pay
1 s. 6 d.

You then prepare a draught of your recovery in the form after mentioned, and getting a roll from the prothonotary's office enter it thereon in an ingrossing hand.

Then the exemplification is to be ingrossed in an exemplifying hand in the form hereafter mentioned, on a skin of parchment, with a double five shillings fee &c. Then go to the prothonotary's office, taking with you the roll, exemplification, writs, and *Præcipe* passed at bar, docket the roll, enter the *Præcipe* on the remembrance roll, according to the form you'll see there, and one of the prothonotary's clerks will examine the writs, entries and exemplification; you pay him the fees, which are different according to the nature of the case; he then signs the exemplification, which you then get sealed.

The form of the recovery as entered on the roll.

*Entry returnable from Easter
day in 15 days.*

Effex, S. R. gentleman, in his proper person demandeth against R. R. gentleman, three messuages and twenty-four acres of land with the appurtenances in D. as his right and inheritance, and into which the same R. hath not entry but after the disseisin which *Hugh Hunt* thereof unjustly, and without judgment hath made to the said S. within thirty years, &c. And whereupon
he

he saith, that he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, £*s.* and into which, £*s.* and thereof he bringeth suit, £*s.*

And the aforesaid *R.* in his proper person cometh and defendeth his right, when, £*s.* and therein and voucheth to warrant *S. F.* who is present here in court in her proper person, and freely warranteth the tenements aforesaid, with the appurtenances, to the said *R.* £*s.* and hereupon the said *S.* demandeth against the said *S.* tenant by her own warranty the tenements aforesaid, with the appurtenances in manner aforesaid, £*s.* and whereupon he saith, that he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, £*s.* and into which, £*s.* and thereof he bringeth suit, £*s.*

And the said *S.* tenant by her own warranty defendeth her right, when, £*s.* and thereupon she further voucheth to warrant *Edmund Wilson*, who is present here in court in his proper person, and freely warranteth to her the tenements aforesaid with the appurtenances, £*s.* and hereupon the said *S.* demandeth against him the said *Edmund* tenant by his own warranty the tenements aforesaid, with the appurtenances in manner aforesaid, £*s.* and whereupon he saith, that
he

he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

And the said *Edmund*, tenant by his own warranty defendeth his right, when, &c. and saith, that the said *Hugh* M. doth disseise the said *S.* of the tenements aforesaid with the appurtenances, as the said *S.* by his writ and declaration above doth suppose; and of this he putteth himself upon the country, &c.

And the said *S.* thereupon craveth leave to imparle, and he hath it, &c. and afterwards the said *S.* cometh again here into court in this same term in his proper person, and the said *Edmund* although solemnly called cometh not again, but departed in contempt of the court, and maketh default; therefore it is considered, that the said *S.* recover his seisin against the said *R.* of the tenements aforesaid with the appurtenances, and that the said *R.* have of the land of the said *S.* to the value, &c. and furthermore that the said *S.* have the land of the said *Edmund* to the value, &c. and the said *Edmund* in mercy, &c. and hereupon the said *S.* prayeth a writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause full seisin of the tenements aforesaid with the appurtenances to be delivered to him, and is granted to him returnable here on the mor-

row

row of the Ascension of our Lord; at which day the said S. cometh here into court in his proper person, and the sheriff namely *E. E.* esq; now returneth, that he by virtue of the aforesaid writ to him directed on the twenty-second day of *May* in this same term did cause full seisin of the tenements aforesaid with the appurtenances, to be delivered to the aforesaid S. as by the said writ he was commanded, and 'c.

Exemplification of the above recovery.

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To all to whom these our present letters shall come, greeting. Know ye that amongst the pleas of land inrolled at *Westminster*, before Sir *John Eardley Wilmot*, knight, and his brethren our justices of the bench of the term of *Easter* in the seventh year of our reign, upon the seventh roll it is thus contained: Entry returnable [*the whole of the above entry to the words*] Comanded, &c. All and singular which premisses at the request of the said S. by the tenor of these presents we have commanded to be exemplified; in testimony whereof, we have caused our seal appointed for sealing of writs in the bench aforesaid to be affixed to these presents. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the twenty-first day of *May* in the seventh year of our reign.

Cooke.

To

The warrant of attorney is to be ingrossed on parchment thus :

Shropshire, *to wit*, *R. W.* esquire, and *W. W.* gentleman, whom *A. B.* gentleman, hath vouched to warrant, put in their place *J. S.* and *E. C.* their attornies, jointly and severally against *R. R.* gentleman, of a plea of land, &c.

Taken and acknowledged the
day of in the
seventh year of the reign of
king *George* the third, be-
fore.

The vouchees are to sign and acknowledge the warrant of attorney, in the presence of any two of the commissioners who are to sign the caption, and also an indorsement on the back of the *Dedimus* in these words, *viz.*

The execution of this commission appeareth in a certain schedule to this commission, annexed.

Hilary Term, *in the fourteenth year*
of the reign of king George the third.

In the common pleas.

FOR the more effectual and certain proof of the due acknowledgment of warrants of attorney, taken from the tenants or vouchees in common recoveries, by virtue of any writ of *Dedimus Potestatem*, It is ordered by the court, That from and after

the first day of *Michaelmas* term next, no common recovery, wherein the tenant or tenants, vouchee or vouchees, or any of them, shall appear and defend by attorney, shall be arraigned at the bar, unless an affidavit or affidavits in writing on parchment shall be made and annexed to a copy of the precipe and warrant or warrants of attorney, acknowledged by such tenant or tenants, vouchee or vouchees, by virtue of any writ or writs of *Dedimus Potestatem*; in which affidavit or affidavits the person or persons making the same shall swear, That he or they knew the party or parties acknowledging such warrant or warrants of attorney; that the same was or were duly signed and acknowledged, upon the day and year or several days and years mentioned in the caption or several captions thereof; that the party or parties acknowledging, and also the commissioners taking the same, were all of full age and competent understanding; that the femes covert (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same; that all the said parties knew the same warrant or warrants of attorney was or were intended for suffering a common recovery to pass his, her, or their estate or estates. And further, that the rature or razures, interlineation or interlineations, (if any) in the body or caption of such original warrant or warrants of attorney was or were made before the said parties or any of them signed the said warrant or warrants,

and

and before the commissioners signed the said caption or captions, which affidavit or affidavits (together with the said copy of the precipe and warrant or warrants of attorney, whereunto the same shall be annexed) shall be filed in the office of inrolment of writs for fines and recoveries. And it is ordered, That all and every such affidavit or affidavits, as aforesaid, shall be made by some attorney or attornies, of the courts of *Westminster-Hall*, or of the great sessions in *Wales*, or of the counties palatine of *Chester*, *Lancaster* or *Durham*, and shall be sworn before a person duly authorized to take affidavits in this court, except where the party or parties respectively, at the time of their acknowledging such warrant or warrants of attorney, shall be in that part of *Great-Britain* called *Scotland*, or in *Ireland*, or in some other parts beyond the seas: and in case the said party or parties shall be in *Scotland*, then the said affidavit or affidavits shall be made by one of the clerks of his majesty's signet, and sworn before one of the judges or other person duly authorized to take affidavits or depositions in the court of session or court of exchequer in that part of the united kingdom: But if the said party or parties shall be in *Ireland*, or in any other parts beyond the seas, then the said affidavit or affidavits shall be made by one of the commissioners who hath taken the acknowledgment of such warrant or warrants of attorney, and shall be sworn either before some person duly authorized to take

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affidavits in this court, or before some magistrate of the place where such acknowledgment shall be taken, having authority to administer an oath, and in the presence of a public notary, which notary shall also certify in writing under his hand and seal, as well the due administering of the said oath, as also the name, signature, and office of the magistrate administering the same.

By the COURT.

The FORM of the AFFIDAVIT.

In the Common Pleas.

A. B. of *in the county of*
gentleman, one of the attor-
nies of his majesty's court of
and one of the commissioners named in the writ
of Dedimus Potestatem, for receiving the at-
torney or attornies of C. D. and E. his wife (Ec.)
maketh oath, and saith, That he knows the
said C. D. and E. his wife (Ec.) and that
they, and each (or every) of them, did duly
sign and acknowledge, in the presence of this
deponent, and of F. G. another commissioner
named in the said writ, the warrant (or war-
rants) of attorney, a copy whereof is bereunto
annexed, on the day and year (or several days
and years) mentioned in the caption (or several
captions) thereof. And that the said C. D.
and E. his wife (Ec.) and also this deponent,
and the said F. G. were, at the time of ac-
knowledging and taking the said warrant (or
warrants)

warrants) of attorney, all of full age and competent understanding. And that the said E. was solely and separately examined apart from her said husband, and freely and voluntarily consented to and acknowledged her warrant of attorney aforesaid. And that the said C. D. and E. his wife (&c.) respectively knew that the said warrant (or warrants) of attorney was (or were) intended for the suffering of a common recovery to pass his, her, or their estate or estates. " And this deponent further saith, ^{To be added in} That the rasure (or razures) interlineation (or part or in the interlineations) appearing in the said original ^{whole, if any} warrant (or warrants) of attorney, was (or ^{razure, &c. in} were) made before any of the parties signed the ^{the warrant} said warrant (or warrants,) and the rasure or ^{or caption, as} razures) interlineation (or interlineations) ap- ^{require.} pearing in the said original caption (or captions) was (or were) made before the said commissioners signed the same.

Or thus, if the affidavit is not made by a commissioner.

In the Common Pleas.

A. B. of ^{in the county of} gentleman, one of the attornies of his majesty's court of ^{maketh} oath, ana saith, That he knows C. D. and E. his wife (&c.) and that they, and each (or every) of them, did duly sign and acknowledge, in the presence of this deponent, the warrant (or warrants) of attorney, a copy whereof is herewith annexed, on the day and year (or several ^{I i 3} days

days and years) mentioned in the caption (or several captions) thereof; and that they the said C. D. and E. his wife (&c.) and F. G. and J. K. gentlemen, the commissioners taking the said acknowledgment (or acknowledgments) were, at the time of acknowledging and taking the said warrant (or warrants) of attorney, all of full age, &c. as in the former affidavit.

When the *Dedimus* is returned, you carry it to the curfitor, who will make out a *Mittimus* and transcript, and also the writ of entry.

In the mean time you make out the writs of summons and seisin in the manner herein after directed, which are to be signed by the prothonotary, and then sealed.

You also get the recovery passed at bar (which may regularly be done any day after the return of the writ of summons, as to which *videa postea*) and for that purpose you write the *Praeceptum* on paper in the same manner as before directed for the *Dedimus*, only adding the term, and prothonotary's name, at the top; you attend with the tenant at *Westminster*, and deliver the *Praeceptum* to a serjeant's clerk, who will get it passed for you, as before is mentioned.

You get the writ of entry signed by the attorney general, (though that is often done last of all,) compound for the fine at the alienation office, and get the writs of entry, summons and seisin, returned in manner before directed,

You

You then prepare your entries, which in this case are two, the forms of which follow; the first of which is called the summons roll, and is to be wrote in an ingrossing; the second, called the recovery roll, begins with the *Mittimus*, and transcript, which is to be wrote in a smaller hand; and the rest of that roll in an ingrossing hand; these rolls you have from the prothonotary.

You then prepare and ingross the exemplification, the form of which you will find among the following precedents; and then pass the whole at the prothonotary's office, in manner before directed.

The first, or summons roll.

Shropshire, *R.* gentleman, in his proper *To be wrote to wit.* person, demandeth against *in an ingrossing*
A. B. gentleman, twenty messuages [*the par-*
cels as before] with the appurtenances in *B. L.*
B. C. and *L.* as his right and inheritance,
 and into which the same *A.* hath not entry,
 but after the disseisin, which *Hugh Hunt*
 thereof unjustly, and without judgment,
 hath made to the said *R.* within thirty years,
 &c. And whereupon he saith, that he was
 seised of the tenements, common, fairs, mar-
 kets, toll, stallage and pickage aforesaid,
 with the appurtenances, in his demesne as
 of fee and right, in time of peace, in the time
 of our lord the king that now is, by taking
 the profits thereof, to the value, &c. And

into which, &c. And thereof he bringeth suit, &c.

And the said *A.* in his proper person, cometh and defendeth his right when, &c. And thereupon voucheth to warrant *R. W.* esquire, and *W. W.* gentleman, summoned in the county aforesaid, and let him have them here, from the day of Saint *Martin* in fifteen days, by the aid of the court &c. The same day is given here to the parties aforesaid, &c. And upon this the said *A.* putteth in his place *J. W.* and *T. B.* his attorney, jointly and severally, against the said *R. R.* to gain or lose in the plea aforesaid, &c.

The second roll.

*To be wrote
in a smaller
hand.*

OUR lord the king sent to his justices of the bench here this writ of *Mittimus* closed, together with the tenor of a certain writ of our said lord the king of *Dedimus potestatem*, for the receiving a warrant of attorney, and the return of the same; and also the warrant of attorney thereupon received, in these words:

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To his justices of the bench, greeting. We send you, inclosed in these presents, the tenors of our certain writ of *Dedimus potestatem*, directed to our trusty and well-beloved Sir
J. B.

J. B. knight, and to our beloved G. M. and T. M. gentlemen, for and concerning the receiving the attorney or attornies, jointly or severally, whom or who R. W. esquire, and W. W. gentleman, will appoint or constitute in their stead, before the aforesaid Sir J. G. and T. or two of them, against R. R. gentleman, to gain or lose in a plea of land upon our writ of entry upon disseisin *in le poss.*, depending before you, between the aforesaid R. R. and A. B. gentlemen, concerning twenty messuages, &c. [*naming all the parcels as before,*] with the appurtenances, in B. L. B C. and L. in *Sbropshire*; which same A. hath vouched the same R. W. and W. to warrant to him the messuages aforesaid, and other the premisses with the appurtenances; also the return of the same writ of *Dedimus potestatem*; and likewise a warrant of attorney received in that behalf sent into our *Chancery*, and remaining on the files of the same *Chancery*, commanding you, that, inspecting the said tenors, you cause farther to be done therein at the prosecution of the said R. R. what of right, and according to the law and custom of *England*, shall be meet to be done. Witness ourself at *Westminster* the twenty first day of *November* in the seventh year of our reign. *Sykes.*

George the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To his trusty and well-beloved Sir J. B. knight, and to his beloved G. M. and T. M. gentlemen, greeting. Whereas our writ of entry upon disseisin

seisin *in le poss* is depending before our justices of the bench, between *R. R.* gentleman, and *A. B.* gentleman, concerning twenty messuages, &c. [*all the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* in *Shropshire*; and the said *A.* appearing in our full court before our justices aforesaid, hath vouched *R. W.* esquire, and *W. W.* gentleman, to warrant to ^{them} the messuages aforesaid, and other the premises, with the appurtenances: Whereupon our writ of summons to warrant hath issued forth against the said *R. W.* and *W.* returnable before our justices aforesaid, from the day of Saint *Martin* in fifteen days. And forasmuch as the said *R. W.* and *W.* are so infirm, that they cannot, without the greatest bodily danger, travel to *Westminster* at the day in our said writ of summons to warrant contained, to do and act those things which then and there shall be expedient to be done in the same, as we are informed; we, tendering the condition of the said *R. W.* and *W.* in this behalf, have given to you, or two of you, power and authority to receive the attorney or attornies jointly or severally, whom or who the said *R. W.* and *W.* before you, or two of you, will appoint or constitute in their stead, to gain or lose in the said plea before our said justices: And therefore we command you, or two of you, that you go in person unto the said *R. W.* and *W.* if they cannot conveniently travel to you, and receive their attorney or attornies, jointly or severally, in form aforesaid; and when y^e shall

shall have received the said attorney or attornies, you distinctly and plainly, without delay, certify us in our *Chancery* under your seals, or the seals of two of you, of the name or names of such attorney or attornies, sending back unto us this writ. Witness ourself at *Westminster*, the fourth day of *November* in the seventh year of our reign. *By the lord chancellor of Great Britain*, at the instance of the demandant *H. C. J. Wilmot*. The execution of this commission appears in a certain schedule to this commission annexed. *G. M. T. M.* Received 6s. 8d. *R. Salkeld*. Shropshire, *to wit*, *R. W.* esquire, and *W. W.* gentleman, whom *A. B.* gentleman, vouched to warrant, put in their place *J. Sharpe* and *E. C.* their attornies, jointly and severally against *R. R.* gentleman, of a plea of land, &c. *R. W. W. W.* Taken and acknowledged the 18th day of *November* in the seventh year of the reign of king *George* the third, before *G. M. T. M.*

Elsewhere, as it appeareth of this same *Ingressing* term upon the 421st roll, it is thus contained: Shropshire, *to wit*, *R. R.* gentleman, in his proper person, demandeth against *A. B.* gentleman, twenty messuages, &c. [*naming the parcels as before,*] with the appurtenances, in *B. L. B. C.* and *L.* as his right and inheritance; and into which the same *A.* hath not entry, but after the disseisin which *Hugh Hunt* thereof unjustly, and without judgment, hath made to the said *R.* within thirty years, &c. And whereupon he saith, that he

he was seised of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances in his demesne as of fee and right, in time of peace, in the time of our lord the king thar now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

And the said *A.* in his proper person, cometh and defendeth his right when, &c. and thereupon voucheth to warrant *R. W.* esquire, and *W. W.* gentleman, summoned in the county aforesaid; let him have them here from the day of Saint *Martin* in fifteen days, by the aid of the court, &c. The same day is given here to the parties aforesaid, &c. And upon this the said *A.* putteth in his place *J. W.* and *T. B.* his attornies jointly and severally, against the said *R. R.* to gain or lose in the plea aforesaid, &c. At which day here cometh as well the said *R. R.* in his proper person, as the said *A.* by the said *J. W.* his attorney. And the said *R. W.* and *W.* being summoned, &c. likewise come by *J. S.* their attorney, and freely warrant the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, to the said *A.* &c. And hereupon the said *R. R.* demandeth against the said *R. W.* and *W.* tenants by their own warranty, the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, in manner aforesaid, &c. And whereupon he saith, that he was seised of the tenements, common, fairs, market,

kets, toll, stallage and pickage aforesaid, with the appurtenances in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, £c. and into which, £c. and thereof he bringeth suit, £c.

And the said *R. W.* and *W.* tenants by their own warranty defend their right when, £c. and thereupon they further vouch to warrant *Edmund Wilson*, who is present here in court in his proper person, and freely warranteth to them the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, £c. And hereupon the said *R. R.* demandeth against him the said *Edmund*, tenant by his own warranty, the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, in manner aforesaid, £c. And whereupon he saith, that he was seised of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, £c. and into which, £c. and thereof he bringeth suit, £c.

And the said *Edmund* tenant by his own warranty defendeth his right when, £c. and saith, that the said *H.* did not disseise the said *R. R.* of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, as the said *R. R.* by his

his writ and declaration above doth suppose : And of this he putteth himself upon the country, &c.

And the said *R. R.* thereupon craveth leave to imparle, and he hath it, &c. And afterwards the said *R. R.* cometh again here into court in this same term, in his proper person ; and the said *Edmund* although solemnly called, cometh not again, but departed in contempt of the court, and maketh default ; therefore it is considered, that the said *R. R.* recover his seisin against the said *A.* of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances ; and that the said *A.* have of the land of the aforesaid *R. W.* and *W.* to the value, &c. And furthermore, that the said *R. W.* and *W.* have of the land of the said *E.* to the value, &c. And the said *Edmund* in mercy, &c. And hereupon the said *R. R.* prayeth a writ of our lord the king, to be directed to the sheriff of the county aforesaid, to cause full seisin of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid, with the appurtenances, to be delivered to him ; and it is granted to him returnable here in eight days of Saint *Hilary* : At which day the said *R. R.* cometh here into court in his proper person ; and the sheriff, namely Sir *R. A.* baronet, now returneth, that he, by virtue of the aforesaid writ to him directed on the sixth day of *December* last, did cause full seisin of the tenements, common, fairs, markets, toll, stallage and pickage aforesaid,

aforesaid, with the appurtenances, to be delivered to the aforesaid R. R. as by the said writ he was commanded, &c.

A common recovery was amended by inserting the word *Marsham* (being the name of a parish) among the parishes mentioned in the recovery, upon an affidavit made by the vouchee, that some part of the lands, whereof the recovery was intended to be suffered, extended into and lay in the parish of *Marsham* in *Kent*, and that the same was intended to be comprized in and passed by the indenture of bargain and sale, and the recovery, altho' the said parish of *Marsham* was not mentioned either in the recovery, or said deed to lend the uses thereof. 3 *Wils. Rep.* 154.

The exemplification of a recovery, where the tenant appears in person, and the vouchee on summons.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To all to whom these our present letters shall come, greeting. Know ye that amongst the pleas of land inrolled at Westminster, before Sir—— knight, and his brethren, our justices of the bench of the term of Easter in the sixth year of our reign, upon the forty-second roll, it is thus contained; Elsewhere as it appears in the term of Saint Hilary last past, upon the three hundredth and third roll, it is thus contained*:

The recovery as entered on the roll, the exemplification being without paragraphs.

Somersetshire, ss. A. B. (the demandant) in his proper person demandeth against C. D. (the tenant) one messuage [reciting the parcels] with the appurtenances in D. as his right and inheritance, and into which the same C. hath not entry but after the *Disseisin*, which *Hugh Hunt* thereof unjustly and without judgment hath made to the said A. within thirty years, &c. and whereupon he saith, that he was seised of the tenements aforesaid, with the appurtenances in his demesne as of fee and right, in time of peace, in the time

* When vouchee appears at bar, insert the return of the writ of entry, thus: "Entry returnable in 15 days of Saint Martin."

of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

And the said C. in his proper person cometh and defendeth his right when, &c. and thereupon voucheth to * warrant W. W. and M. his wife, summoned in the county afore-
* If there be no summons, then say,
 said; let him have them here from Easter-day in five weeks, by the aid of the court, &c. the same day is given here to the parties afore-
voucheth to warranty W. W. (the vouches) who is present here in court in his proper person, and freely warranteth the tenements afore-
 said, with the appurtenances, to the said C. &c.
 said, &c. And upon this the said C. putteth in his place G. H. and J. K. his attorneys jointly and severally, against the said A. to gain or lose of the plea afore-
the tenements afore-
 said, with the appurtenances, to the said C. &c.
 said, &c. at which day here cometh, as well the said A. in his proper person, as the said C. by the said G. H. his attorney, and the said W. and M. being summoned, &c. likewise come by T. T. their attorney, and freely warrant the tenement afore-
the said A.—
 said, with the appurtenances to the said C. &c. And hereupon the said A. demandeth against the afore-
 said W. and M. tenants by their own warranty, the tenements afore-
 said, with the appurtenances, in manner afore-
 said, &c. and whereupon he saith, that he was seised of the tenements afore-
 said, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

And the said W. and M. tenants by their warranty, defend their right when, &c.
 no. I. K k and

and thereupon they further vouch to warrant *Edmund Wilson*, who is present here in court in his proper person, and freely warranteth to them the tenements aforesaid, with the appurtenances, &c. And hereupon the said *A.* demandeth against him the said *Edmund*, tenant by his own warranty, the tenements aforesaid, with the appurtenances, in manner aforesaid, &c. and whereupon he saith, that he was seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in time of peace, in the time of our lord the king that now is, by taking the profits thereof, to the value, &c. and into which, &c. and thereof he bringeth suit, &c.

And the said *Edmund* tenant by his own warranty defendeth his right, when, &c. and saith, that the said *Hugh* did not disseise the said *A.* of the tenements aforesaid, with the appurtenances, as the said *A.* by his writ and declaration above doth suppose; and of this he putteth himself upon the country, &c.

And the said *A.* thereupon craveth leave to imparle, and he hath it, &c. and afterwards the said *A.* cometh again here into court in this same term in his proper person, and the said *Edmund*, altho' solemnly called, cometh not again, but departed in contempt of the court, and maketh default; therefore it is considered that the said *A.* recover his seisin against the said *C.* of the tenements aforesaid, with the appurtenances; and that the said *C.* have of the land of the aforesaid *W.* and *M.* to the value, &c. And further
ore

more, that the said *W.* and *M.* have of the land of the said *Edmund*, to the value, &c. and the said *Edmund* in mercy, &c. And hereupon the said *A.* prays a writ of the lord the king, to be directed to the sheriff of the county aforesaid, to cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to him, and it is granted to him, returnable here * forthwith, &c. Afterwards, that is to say, the seventh day of *May* in this same term, the said *A.* cometh here into court in his proper person, and the sheriff, namely, *R. S.* esquire, now returneth, that he, by virtue of the aforesaid writ to him directed, on the † fifth day of the

* Or, returnable here in *three weeks from Michaelmas day (or as the return is)* at which day the said *A.* cometh here—

Note; you may get ready your writ of seisin, and seal it, and return it with your writ of entry. The writ of seisin ought to be made returnable at least 15 days after the teste day of the return of the writ of entry; but if the writ of entry be returnable towards the latter end of the term, so that there are not 15 days between the return of the writ of entry and the last return of the term, then the writ of seisin must always be made (*returnable indilate*) and the writ of seisin must always bear *Teste* the teste-day of the return of the writ of entry, when there is no summons. But if the writ of entry be made returnable the last return of the term, then the writ of seisin must be returnable the first return of the subsequent term.

† You may suppose seisin to be delivered any reasonable time (so it be not on a *Sunday*) between the *Teste* and return, allowing that a man might ride from *Westminster* to the land, and back again by that time, which may be supposed to be done in six days, in any part of *England*.

*Thus far as
on the roll.*

same month of *May*, did cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to the aforesaid *A.* as by the said writ he was commanded, &c.¹ All and singular which premisses, at the request of the said *A.* by the tenor of these presents, we have commanded to be exemplified, in testimony whereof, we have caused our seal, appointed for sealing of writs in the bench aforesaid, to be affixed to these presents. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the * *seventh* day of *May*, in the———year of our reign.

*The writ of
summons for
the first
vouchee.*

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *S.* greeting. Summon by good summoners (*the vouchee*) that he be before

* You must teste your exemplification after the return of the writ of seisin, if such writ be returnable in the same term in which judgment was given; but if the writ of seisin be returnable of a subsequent term, then you *Teste* your exemplification the last day of the term in which judgment was given. And observe that immediately after the swarding the return of the writ of seisin, you go on in the exemplification, *All and singular which premisses* [&c. as in the foregoing,] and then upon the folding up of the bottom of the exemplification you indorse the return of the sheriff thus, *At which day the said A. B. cometh here into court in his proper person, and the sheriff namely R. S. esquire, now returneth* [&c. as before. But on the roll you make no such distinction.

our justices at *Westminster the return**) to warrant to (*the tenant*) one messuage and ten acres of land, with the appurtenances in *D.* which (*the demandant*) in our court before our justices at *Westminster* claimeth as his right by our writ of entry upon disseisin in *le poss* against the said (*the tenant*) and whereof the said (*the tenant*) in our said court, hath vouched the said (*the vouchee*) to be summoned in your county, to warrant against the said (*the demandant*) and have then there the summoners and this writ. Witness Sir *John Eardley Wilmot*, knight, at *Westminster*, the † — day of — in the — year of our reign.

GEORGE the third [*&c.*] to the sheriff *Summons for*
of *S.* greeting. Summon by good sum- *the second*
moners (*the second vouchee*) that he be be- *vouchee.*
fore our justices at *Westminster* (*the fourth*

* There were formerly nine returns, between the return of the writ of *Entry* and return of the writ of *Summons*, and so betwixt one writ of summons and another; but by the *Statute 17 Car. 2. cap. 6.* they are abridged to five returns inclusive. And by the *Statute 24 Geo. 2. c. 48.* to four returns inclusive. For example, if the writ of entry be returnable, on the morrow of *All Souls day*, then the writ of summons must be returnable, *in fifteen days from the day of St. Martin*, accounting the return of the writ of entry for one, and then the fourth return is the summons: And so it is betwixt one summons and another.

† The first writ of summons must bear tette the fourth day inclusive from the return of the writ of entry, and so a second summons from the return of the first.

return from the first summons inclusive) to warrant to (the first vouchee) whom (the tenant) in our court before our said justices at Westminster, heretofore did vouch to warrant, one messuage (reciting the parcels) which (the demandant) in our said court claimeth as his right, by our writ of entry upon disseisin in *le post* against the said (the tenant) and whereupon the said (the first vouchee) in our said court hath further vouched the said (the second vouchee) to be summoned in your county, to warrant against the said (the demandant) and have then there the summoners and this writ. Witness Sir John Eardley Wilmot, knight, at Westminster, the — day of — (Teste the appearance day of the return of the first summons) in the — year of our reign.

*The writ of
seisin.*

GEORGE the third [Etc.] to the sheriff of — greeting. Know you that (the demandant) in our court before our justices at Westminster, hath recovered his seisin against (the tenant) of one messuage (reciting the parcels) by our writ of entry upon disseisin in *le post*; and therefore we command you, that without delay you cause full seisin of the tenements aforesaid, with the appurtenances, to be delivered to the said (the demandant) and in what manner you shall have executed this our command, that you make appear to our justices at Westminster * forthwith, and

* Returnable immediately, because not 15 days in the term from the teste, the teste being the fourth day after inclusive from the return of the second summons, if it be not Sunday.

that you have then there this writ. Wit-
ness, (Ec.)

By virtue of this writ to me directed on *The return.*
the * — day of — in the year within writ- You return
I caused full seisin of the tenements this yourself.
within specified, with the appurtenances, to
be delivered to the within named (*the deman-*
dant) as within I am commanded.

T. T. esquire, sheriff.

*If the recovery be with a treble voucher, you
enter it as before, to*

— And the said *W. and M. (his wife)* *A recovery*
tenants by their own warranty defend their *with treble*
right when, Ec. and thereupon they further *vouchers.*
vouch to warrant *J. S. gentleman (the second*
vouchee) summoned in the county aforesaid;
let them have him here (*the return*) by the
aid of the court, Ec. the same day is given
here, as well to the said *A. and C.* as to the
said *W. and M.* tenants by their warranty,
Ec. At which day come here as well the
said *A. B.* in his proper person, as the said
C. D. and the said *W. W. and M. (his wife)*
by their attorney aforesaid: And the said *J.*
S. being summoned, Ec. cometh likewise by
K. L. his attorney, and freely warrants the
tenements aforesaid, with the appurtenances,
to the said *W. and M.* Ec. and thereupon
the said *A.* demandeth against the said *J.*

* Any reasonable day between the teste and return.

The Attorney's Practice

(who vouches the common vouchee as W. W. &c. the first vouchee did in the former, and so proceed till you come to the judgment, and that the said C. have of the land of the said W. and M. to the value, &c. and further, that the said W. and M. &c. have of the land of the said J. to the value, &c. and furthermore, that the said J. have of the land of the said Edmund, to the value, &c. and the said Edmund in mercy, &c. and hereupon the said A.—(as in the former.)

**BILL of DISBURSEMENTS on suffering
a COMMON RECOVERY, in a PLEA
of LAND.**

Michaelmas Term, 1778.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Perusing writings and papers, and drawing deed to lead the uses	0	0	0	0	6	8	0	13	4
<i>Precipe</i> for entry, and copy for curfitor	0	0	0	0	1	6	0	3	0
Writ of entry and fine	0	8	0	0	11	4	0	14	2
King's fine	5	10	6	5	10	6	5	10	6
Attending to compound same	0	0	0	0	3	4	0	6	8
Alienation fees	0	3	6	0	3	6	0	3	6
Attorney-general's hand to entry	0	10	0	0	10	0	0	10	0
Attending him	0	0	0	0	1	8	0	3	4
Returning writ of entry	0	1	6	0	1	9	0	2	0
<i>Precipe</i> for bar and copy	0	0	0	0	1	6	0	3	0
Entering same on remembrance roll	0	0	0	0	1	6	0	3	0
Tenant's appearance at bar	0	0	0	0	3	4	0	6	8
Serjeants for arrangement of recovery, for demandant, tenant, first and second vouches	0	8	0	0	10	8	0	13	4
Attending thereon	0	0	0	0	3	4	0	6	8

Prothonotary,

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Prothonotary, secondary, and criers	0	5	0	0	5	0	0	5	0
Recovery and award of feisin, and copy 8 <i>d.</i> a folio	0	0	0	0	8	0	0	16	0
Entering same on roll	0	0	0	0	6	0	0	12	0
To prothonotaries for entry	0	11	0	0	12	9	0	14	6
Stamp and parchment for exemplification	0	13	6	0	13	5	0	12	6
Exemplifying recovery, fo. 15	0	0	0	0	12	6	1	5	0
Sealing and box	0	3	0	0	3	0	0	3	0
Writ of feisin	0	2	8	0	7	2	0	11	8
Returning	0	1	6	0	1	9	0	2	0
Filing writs of entry, and feisin	0	2	0	0	2	0	0	2	0
Term fees demandant, tenant, first and second vouchee	0	0	0	0	13	4	1	6	8
Letters, &c.	0	0	0	0	1	0	0	2	0
Execution of deed to make tenant to <i>precipe</i>	0	0	0	0	3	4	0	6	8

Precedents of declarations, &c.

Hampshire, *J.* *R.* and *E.* his wife, by *W.* Count in dower to wit. *J.* *S.* their attorney, demand *er.* against *A. W.* the third part of two messuages and two gardens, with their appurtenances, in *Gosport*, as the dower of the said *E.* of the endowment of *A. W.* deceased, her late husband, by writ of our lord the king of dower, whereof she hath nothing, &c.

And the said *A.* the now defendant, by *Judgment by R. P.* his attorney cometh, and saith nothing *Nil dicit.* in bar of the said action of the said *J.* and *E.* whereby the said *J.* and *E.* remain against the said *A.* the now defendant thereof undefended. Therefore it is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, their seisin of the third part above demanded, with the appurtenances, to be held by them in severalty by metes and bounds; and nothing of the mercy of the said *A.* the now defendant, because he came the first day by summons, &c. And hereupon the said *J.* and *E.* say, that the said *A.* late husband of the said *E.* died seised of the tenements aforesaid, with their appurtenances in his demesne as of fee, and pray a writ of the said lord the king to *Writ of seisin* be directed to the sheriff of the county aforesaid, as well to give them full seisin of the *and inquiry awarded.* said third part with the appurtenances, as to inquire of damages, &c. And it is granted to them, returnable here, &c. [*the return.*]

At which day here come the said *J.* and *E.* by their said attorney, and the sheriff, *to wit*, ——— now returneth, that he, by virtue of the said writ to him directed, ~~to wit~~ 20th day of *November* last past, did cause full seisin of the third part of the tenements aforesaid, with the appurtenances (that is to say) of one messuage, &c. to hold the same to the said *J. R.* and *E.* in severalty by metes and bounds, for and in the name of the whole dowry of the said *E.* of the tenements aforesaid, with the appurtenances, happening to her by the death of the said *A.* her late husband, as by the said writ he was commanded, &c. The same sheriff here also returneth a certain inquisition taken before him at the house of ——— at ——— in the said county, the ——— day of ——— ——— last past, by the oath of 12, &c. by virtue of the writ aforesaid, taken, by which it is found, that the said *A. W.* deceased, late husband of the said *E.* in the said writ named, on the ——— day of ——— in the year of our Lord ———, died seised of and in the tenements aforesaid, with the appurtenances, in the said writ specified, in his demesne as of fee, and that the said tenements are of the clear yearly value in all issues beyond reprises of 12*l.* and that 20 years are elapsed since the death of the said *A.* the late husband, &c. and that the said *J.* and *E.* have sustained damages by reason of detaining of the dower aforesaid, besides their costs and charges by them laid out about their suit in this behalf to 80*l.* and for

for those costs and charges to 40*s*. Therefore ~~it~~ is considered, that the said *J.* and *E.* recover against the said *A.* the now defendant, as well the value of the third part of the tenements aforesaid, with the appurtenances, from the time of the death of her said late husband, &c. (which said value from the time of the death of the said *A.* late husband of the said *E.* amounteth to 80*l*.) as their damages aforesaid to 82*l*. by the inquisition aforesaid in form aforesaid found, and also 8*l*. 10*s*. to the said *J.* and *E.* at their request, for their costs and charges aforesaid, by the court here for increase adjudged, which said value and damages in the whole amounted to —, &c.

*Signed 4th
Feb. 1735.*

And the said *W.* by *H. B.* who is admitted by the court of the king here to defend in this behalf for the said *W.* who is under the age of 21 years, as the guardian of the said *W.* cometh and saith, that from the death of the said *J.* late husband of the said *M.* he hath been always ready, and still is ready to render to the said *M.* her dower, of the said tenements and premisses, with the appurtenances, and rendereth the same here in court to the said *M.*

*Defendant by
guardian says,
he was always
ready to render
dower.*

thereupon the said *M.* prayeth leave to imparl here until the morrow of All Souls, and she hath it, &c. The same day is given to the said *W.* here, &c. At which day came here the aforesaid *M.* by her attorney aforesaid, and the said *W.* by his guardian aforesaid; and because the said *M.* doth not

Imparlance.

deny

*Judgment.**Writ of seisin
and inquiry.*

deny the plea of the said *W.* Therefore it is considered, that the said *M.* do recover her seisin against the said *W.* of the third part of the tenements aforesaid, with the appurtenances, and nothing of mercy, because the said *W.* came on the first day of the summons, &c. And hereupon the said *M.* saith, that the said *J.* her former husband, &c. died seised of the tenements aforesaid, with the appurtenances, whereof, &c. in his demesne as of fee; and she prayeth a writ of our sovereign lord the king, to be directed to the sheriff of the county aforesaid; as well to cause full seisin to be made to her of the said third part of the said tenements with the appurtenances, as also to inquire of damages, &c. And because by the confession of the said *W.* above it seemeth to the court here, that the same *W.* from the death of the said *J.* was always ready to render to the said *M.* her dower of the tenements aforesaid, with the appurtenances, by reason whereof the said *M.* ought not to recover the value of third part of those tenements, nor her damages, by occasion of the detaining her dower aforesaid, from the time of the death of the said *J.* her said former husband, until the day of the issuing out the said original writ of the said *M.* against the said *W.* to wit, from the sixth day of *February* in the year of our Lord 1735. And it seemeth to the justices here, that the said *M.* ought to recover against the said *W.* the value of the third part of the tenements aforesaid, with the appurtenances, and her damages occasioned

sioned by detaining her dower aforesaid, from the aforesaid day of issuing out the original writ aforesaid, if, &c. Therefore the sheriff is commanded, that he cause to be made to the said *M.* full seisin of a third part of the tenements aforesaid, with the appurtenances; and that by the oath of good and lawful men of his bailiwick he diligently inquire, if the said *J.* died seised of the tenements aforesaid, with the appurtenances, in his demesne as of fee-simple, or in fee-tail; and if he shall find by their inquisition, then that he inquire upon their oath, how much the tenements aforesaid are worth by the year in all issues above reprises, according to the just value thereof; as also what damages the aforesaid *M.* hath sustained, as well by occasion of the detaining her dower aforesaid from the said day of the issuing the original writ aforesaid, beyond the value thereof, as for her expences and costs by her laid out in this suit; and the inquisition, &c.

And the said *T. A.* by *R. H.* his attorney *Plea in dower,* cometh and saith, that the said *M.* ought not *husband not* to have her dower of the said tenements, *seised.* with the appurtenances, by the endowment of the said *J.* her late husband, because he saith, that the said *J.* her late husband, &c. neither at the day when he married the said *M.* nor at any time afterwards, was seised of the said tenements, with the appurtenances, whereof, &c. of such an estate as he could thereof endow the said *M.* And of this he puts himself upon the country; and the said *M.* doth so likewise, &c. Therefore, &c.

Middlesex,

*Debt on a
judgment.*

Middlesex, to wit, R. D. late of London, carpenter, was summoned to answer unto L. P. of a plea, that he render to him 62 l. of lawful money of Great Britain, which he oweth to, and unjustly detaineth from him, &c. And whereupon the said L. by J. G. his attorney, saith, that whereas the said L. heretofore, that is to say, in *Easter* term in the 4th year of the reign of his present majesty king George the third, in his said majesty's court before Sir ——— knight. and his companions, then his said majesty's justices of the bench here at *Westminster* in the county of *Middlesex*, by the consideration of the same court recovered against the said R. 62 l. which were adjudged to the said L. in the same court for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings then lately made by the said R. to the said L. as for his costs and charges by him about his suit in that behalf expended, whereof the said R. is convicted, as by the record and proceedings thereof now remaining in his said majesty's said court here, to wit, at *Westminster* aforesaid in the said county of *Middlesex*, may appear; which said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied; and the said L. hath as yet obtained no satisfaction of the aforesaid judgment, whereby an action hath accrued to the said L. to demand and have of the said R. the said 62 l. yet the said R. (although often requested) hath not yet paid the said

62l. or any part thereof, to the said *L.* but hath hitherto refused, and still doth refuse to pay him the same, to the damage of the said *L.* 20l. And thereof he bringeth suit, &c.

And the said *R.* by *W. W.* his attorney *Plea Nul tiel* cometh and defendeth the force and injury, *record.* when, &c. and saith, that the said *L.* ought not to have his said action against him, because he saith, that there is not any such record of recovery of damages aforesaid against him the said *R.* in his said majesty's court before Sir _____ knight, and his brethren, his said majesty's justices of the common bench, as the said *L.* in his declaration hath above alledged: And this he is ready to verify; therefore prayeth judgment, if the said *L.* ought to have his said action thereof against him, &c.

And the said *L.* saith, that he by any thing before alledged ought not to be barred from *R plication,* having his aforesaid action maintained against *Habeur tale* the said *R.* because he saith, that there is such a record of recovery against him the said *R.* in his said majesty's court of common bench here remaining, as by the said declaration is above alledged; and this he is ready to verify by the said record; and he prayeth, that the said record may be inspected and *record* here, by the justices here, &c. And because the said *L.* hath not the said record now ready here in court, it is told by the said court here to the said *L.* that he have the said record here on ——— The same day is given to the said *R.* here, &c.

Cooke.

P

Michaelmas term in the ^Pfirst year
of the reign of king George the
third.

*Debt by admi-
nistrators de
bonis non, &c.
on a judgment
recovered by
testator.*

Middlesex, *to wit*, **L**EWIS Westcombe, otherwise called Westcombe late of Rockley in the county of York, esq; was summoned to answer Robert Richardson, esq; administrator of the goods and chattels, rights and credits which were of Robert Fairbeard, esq; deceased, at the time of his death, by Anne Swinburne, widow, executrix of the testament of the said Robert Fairbeard, unadministered, with his testament annexed, of a plea, that he render to the said Robert Richardson 602 l. 10 s. of lawful money of Great Britain, which he unjustly detaineth from him; and whereupon the said Robert Richardson, by Francis Woodhouse his attorney saith, that whereas lately, *to wit*, in the term of St. Hilary in the fifth year of the reign of our sovereign lady Anne late queen of Great Britain, &c. in the court of our said lady the late queen, before the then justices of our said lady the late queen of the bench at Westminster, he the said Robert Fairbeard, by the consideration of the same court recovered against the said Lewis, by the name of Lewis Westcome, late of Rockley in the county of York, esq; as well a certain debt of 600 l. as 50 s. which were adjudged to the said Robert Fairbeard for his damages
which

which he had by occasion of the detaining that debt, whereof the said *Lewis* was convicted, as by the record and process thereof now remaining in the court of our lord the present king of the bench at *Westminster* aforesaid in the said county of *Middlesex* plainly appeareth; and the said *Robert Richardson* further saith, that the said judgment still remaineth in its full force, strength and effect, no ways satisfied, reversed or annulled; and that the said *Robert Fairbeard* in his lifetime, or the said *Anne Swinburne* in her lifetime, or either of them, or he the said *Robert Richardson* after the death of the said *Anne* (* to which said *Robert Richardson* admini-

* If a *parson* commits administration, it need not be shewed by what authority, for he is *Oculus episcopi*, & *de jure ordinario* is to commit administration. *Cluberton* and *Judgeson*, *Cro. Jac.* 556. *Style* 54. 1 *Lew.* 193. So if granted by an official. *Cro. Eliz.* 102. 2 *Mod.* 65. By commissary. 1 *Lutw.* 9. By chancellor. *Littlel. Rep.* 79, 80. 1 *Leon.* 312. *Hett.* 68. *Per vicarium generalium in spiritualibus episcopi B. Ec.* 1 *Lew.* 312. If granted by dean, it must be shewed by what authority. *Cro. Eliz.* 791. So if granted by A. B. *Sacrae theologiae* professor. *Morgan* and *Williams*, *Moor* 367. *Pl.* 504 *Cro. Eliz.* 431. Where granted by archbishop, it need not be shewed there were *Bona notabilia*. *Woodward* and *Thomson*, *Cro. El.* 907. Nor need be shewed whether as ordinary, or by his prerogative. *Cro. Eliz.* 6. It is sufficient to shew, that the king granted administration without shewing his power, for he hath universal jurisdiction. *All.* 53. 1 *Sid.* 302. Though in a declaration the bishop's authority to grant administration need not be shewed; yet it is otherwise in a bar. *Churd* and *Purd*, *Cro. Eliz.* 838. And for this diversity vide

ministration of the goods and chattels, rights and credits which were of the said *Robert Fairbeard* at the time of his death administered by the said *Anne*, after the death of the said *Anne*, to wit, on the 20th day of July in the year of our Lord 1727, at *Westminster* aforesaid in the said county of *Middlesex*, was in due manner, (with the testament of the said *Robert Fairbeard* annexed) committed by *William*, by Divine Providence archbishop of *Canterbury*) have not, nor hath any one of them sued out execution against the said *Lewis* upon the said judgment for the debt and damages aforesaid; whereby an action hath accrued to the said *Robert Richardson*, as administrator as aforesaid, to demand and have of the said *Lewis* the said 602*l.* 10*s.* Yet the said *Lewis*, although often required, &c. hath not paid the said 602*l.* 10*s.* the said

1 *Leon.* 312. *Lat.* 79, 80. 1 *Sid.* 302. *Style* 106, 282. 1 *Lev.* 193.—*Palm.* 97, 98. And a diversity taken where committed by one that hath a particular jurisdiction within a certain circuit, for there it ought to be specially shewed, that he is ordinary of that place; but otherwise where committed by an archbishop who hath episcopal jurisdiction, and the power of the bishop. *Skidmore* and *Winston*, *Cro. Eliz.* 879. 1 *Sid.* 228, 302. *Style* 54. 1 *Salk.* 38. 4 *Mod.* 133.

If shewed that administration was *debito modo* granted to the plaintiff per A. B. *Commissarium* & *quodam peculiaris jurisdictionis* de B. it is well enough without shewing he had power to grant administration, for every peculiar hath an ordinary. *Denham* and *Stephenson*, *Salk.* 40. *Mason* and *Hampton*, 4 *Mod.* 133. 1 *Shrew.* 355. *Comb.* 196. 6 *Mod.* 241.

Robert

Robert Fairbeard in his life-time, or to the said *Anne Swinburne* after the death of the said *Robert Fairbeard*, or to either of them, or to the said *Robert Richardson*, after the death of the said *Anne*; but refused to pay the same to the said *Robert Fairbeard* in his life-time, and to the said *Anne Swinburne* after the death of the said *Robert Fairbeard*, and still refuseth to pay the same to the said *Robert Richardson*, and unjustly detaineth, in default of the administration of the goods and 'chatte' rights and credits of the said *Robert Fairbeard* unadministered by the said *Anne Swinburne* in her life-time, and to the damage of the said *Robert Richardson* of 10*l.* and thereof he bringeth his suit, &c. * And the said *Robert Richardson* bringeth here into court the said letters of administration, which

* If one brings an action as administrator, he must make a *Profert in cur.* of his letters of administration, by which he is intitled to the action. *Cuts and Bennet, Cro. Jac.* 408, 412. Held matter of substance; diversity where one brings an action, and where one pleads an administration in bar. *Curt.* 227. 6 *Mod.* 242 *Cro. Jac.* 556. *Vide* 1 *Sid.* 98. *Style* 236, 282. A verdict did not help, because not necessary to be proved on the trial. But it is now remedied by 16 & 17 *Car.* 2. *Salk.* 38. 4 *Mod.* 133. *Comb.* 196.

After verdict, judgment shall not be stayed or reversed for want of a *Profert in curia* of any letters of administration. *Stat.* 16 & 17 *Car.* 2. c. 8.

No advantage or exception shall be taken for the default of alledging the bringing into court letters of administration; but the court shall give judgment according to the right, unless the same be particularly set down, and shewed for cause of demurrer. *Stat.* 4 & 5 *Ann.* c. 16.

testify the committing the said administration in form aforesaid; the date whereof is on the day and year in that behalf above-mentioned, &c.

Debt on a judgment of the palace court.

Surrey, *to wit*, J. M. late, &c. was summoned to answer H. G. of a plea, that he render to him 99s. and 8d. which he oweth to and unjustly detaineth from him, &c. And thereupon the said H. by J. C. his attorney saith, that whereas the said H. (that is to say) at the court of the king's palace at *Westminster*, held before the judges of the said court there (*to wit* at *Southwark* in the county of *Surrey* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the sixth year of the reign of the present king, by consideration of the said court recovered against the said J. M. (by the name of J. M.) 99s. and 8d. which were decreed to the said H. in the aforesaid court of the king's palace at *Westminster*, held before the said judges of the said court there, for his damages which he had sustained, as well by occasion of the not performing several promises and undertakings made by the said J. M. to the said H. as for his costs and charges by him about his suit in that behalf expended, whereof the said J. is convicted, as by the record and proceedings thereof in the same court of the king's palace at *Westminster*, held before the judges of the said court there, *to wit*, at *Southwark* aforesaid, in the county of *Surrey* aforesaid, within the jurisdiction of the said court there remaining

may appear; which said judgment still remaineth in the said court there in full force, not in the least satisfied, reversed or discharged; and the said *H. G.* hath not as yet sued out any execution upon that judgment, by which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99 s. and 8d. Yet, &c.

Plea, Nul tiel record.

Pl. Habetur tale record.

And whereupon the said *H.* prayeth the King's writ to be directed to the judges of the court of the King's palace at *Westminster*, and to every of them, to certify to the justices of the said lord the king here, whether there be such record of such recovery of the said 99 s. and 8d. against him the said *J.* by the said *H.* or not; and it is granted to him returnable here — At which day here comes as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the court, namely, *W.* duke of *D.* steward of the king's household, Sir *P. M.* knight, marshal of the said household, and Sir *T. N.* knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made between the parties aforesaid, and remaining before them; which said writ and record remain filed amongst the records here, without day, &c.

Whereupon the said *H.* prayeth judgment and his debt aforesaid, together with his da-

mages by reason of detaining the said debt, to be adjudged to him, &c.

Dickins.

Trinity term in the eighth year of the reign of king George the third.

*Debt on bond
by executor
against an heir
at law.*

London, *JOHN Stout*, late of the town, *to wit.* of *Hertford* in the county of *Hertford*, gent. brother and heir of *Henry Stout*, late of the island of *Jamaica*, *Esq.*; deceased, otherwise lately called *Henry Stout*, nunc in London, *sed de insula Jamaicae, armiger*, was summoned to answer *Sarah Fitter*, widow, executrix of the testament and last will of *James Fitter*, late of London, merchant, deceased, of a plea that he render to her 423*0*l. which he unjustly detained, &c. and whereupon the said *Sarah*, by *Joshua Sharpe* her attorney saith, that whereas the said *Henry*, brother of the said *John*, whole heir he is, in his life-time, *to wit.* on the fifth day of *November* in the year of our Lord 1765, at London, *to wit.* in the parish of *St. Mary Le Bow* in the ward of *Cheap*, by his writing obligatory acknowledged himself to be bound to the said *James* in his life-time in the said 423*0*l. to be paid to the said *James* when he should be thereunto required; and to which payment well and faithfully to be made he bound himself and his heirs by the said writing; Yet the said *Henry* in his life-time, and the said *John*, brother

1 Lev. 103,
224.

brother and heir of the said *Henry*, after the death of the said *Henry* (although often required) have not, nor hath either of them paid the said 4330*l.* to the said *James* in his life-time, or to the said *Sarah* after the death of the said *James*, but refused to pay the same to the said *James* in his life-time, and to the said *Sarah* after his death; and the said *John* still refuseth to pay the same to the said *Sarah*, and unjustly detaineth, in delay of the faithful execution of the said testament. Whereupon she saith she is injured, and hath damage to the value of 20*l.* and thereof she bringeth suit, &c. And the said *Sarah* bringeth here into court, as well the said writing which testifieth the said debt in form aforesaid, whose date is the same day, and year aforesaid *, as the letters testamentary

* When one sues as executor, he must in his declaration shew forth the testament to intitle him to the action. *Edwards and Stapleton, Cro. Eliz.* 551. *Cope and Lewin, Hob.* 38. 1 *Brownl.* 9. *Browning and Fuller, Cro. Jac.* 299. It is matter of substance, and not form only. 1 *Brownl.* 200. But whether substance or form. *Hob.* 233. *Cro. Jac.* 556. 2 *Saund.* 402. 1 *Sid.* 249. Diversity taken, where upon the executor's own possession, and where upon the possession of the testator. 2 *Roll. Rep.* 428. *Hob.* 218. Where the want thereof is helped by the defendant's pleading thereto. 1 *Salk.* 37, 38. 6 *Mod.* 135. *Comb.* 465. *Noy* 63.

After verdict, judgment shall not be stayed or reversed for want of a *Proferit in curia* of any letters testamentary. *Stat.* 16, 17 *Car.* 2. c. 8.

testamentary of the said *James*, whereby it appeareth to the court here, that the said *Sarah* is executrix of the testament and last will of the said *James*, and thereof hath the administration, &c.

Plea,
Reus per
descend.
 1 Lev. 130,
 224.
 Stat. 3, 4 W.
 & M. c. 14.
 5 Mod. 122.
Redshaw and
Hester.
Jeffry and
Barrow, Pas.
 10 Annæ.
Cases in law
and equity 18.

And the said *John*, by *Thomas Smith* his attorney, cometh and defendeth the force and injury, when, &c. and saith, That he ought not to be charged with the debt afore said, as brother and heir of the said *Henry*, by virtue of the said writing, *he* cause protesting, that the writing afore said is not the deed of the said *Henry*; And for plea saith, that he hath not any lands or tenements by descent, as heir to the said *Henry*, in fee-simple, nor had on the day of obtaining the original writ of the said *Sarah*, nor at any time since; and this he is ready to verify: Wherefore he prayeth judgment, if he ought to be charged with the debt afore said, as brother and heir of the said *Henry*, by virtue of the writing afore said.

Lilly 147.
Replication.

And the said *Sarah* saith, that by any thing by the said *John* above in pleading alledged, she ought not to be precluded from having her said action against him, because she saith, that before the day of ob-

No advantage or exception shall be taken for the default of alledging the bringing into court of letters testamentary, but the court shall give judgment according to the right, unless the same be particularly set down and shewn for cause of demurrer. *Stat.* 4. 5
Ann. c. 16.

taining

taining her said original writ, *to wit*, on the 3d day of *April* in the 6th year of the reign of our said lord the now king, the said *John* had *sufficient* lands and tenements by descent, as heir to the said *Henry*, in fee-simple, whereout he might have satisfied the said *Sarah* the debt and damages aforesaid, *to wit*, at *London* aforesaid, in the parish and ward aforesaid; and this she is ready to verify: Wherefore she prayeth judgment, and that the said debt, together with the damages by means of the detention of the said debt, may be adjudged unto her; &c.

And the said *John* saith, that before the day of obtaining the said original writ of the said *Sarah*, he had not *sufficient* lands and tenements by descent, as heir to the said *Henry*, in fee-simple, whereout he might have satisfied the said *Sarah* the debt and damages aforesaid or any part thereof, as the said *Sarah* hath in replying above alledged: And of this he putteth himself on the country, &c. And the said *Sarah* doth so likewise, &c.

Oxfordshire, *to wit*, *A. H.* late, &c. Debt on a bond (otherwise called, &c.) was summoned to answer *W. B. J. V.* and *T. B.* of a plea, that she render to them 10*l.* of lawful money of *Great Britain*, which she oweth to them, and unjustly detaineth, &c. and whereupon the said *W. J.* and *T.* by *C. C.* their attorney say, that whereas the said *A.* on the — day of —, in the year of our Lord —, at — in the county aforesaid, by her certain writing obligatory had

had acknowledged herself to be bound to the said *W.* and to one *V. S.* now deceased (whom the said *W. J.* and *T.* survived) and the said *J.* and *T.* in the aforesaid 10*l.* to be paid to them the said *W. V. J.* and *T.* when she the said *A.* should be thereunto required; Yet the aforesaid *A.* (though often required) hath not paid the said 10*l.* to the said *W. V. J.* and *T.* or any of them, in the life-time of the said *V.* or to the said *W. J.* and *T.* or any of them, since the death of the said *V.* (whom the said *W. J.* and *T.* survived), but hath refused to pay them the same, and yet doth refuse to pay the same to the said *W. J.* and *T.* Whereupon they say they are injured, and have damage to the value of 10*l.* and thereof they bring suit, &c. And they bring here into court the said writing obligatory which testifieth the debt aforesaid in form aforesaid, the date whereof is on the day and year abovesaid, &c.

Debt on a bond by the executor of the obligee. Middlesex, to wit, *J. M.* late of West-minster in the county of Middlesex aforesaid, line-merchant, otherwise called *J. M. de paroch. sanct. Marger' Westminst. in com. Middlesex*, — was summoned to answer unto *W. F.* executor of the testament and last will of *R. F.* his late father deceased, in a plea, that he render to the said *W. F.* 200*l.* which he unjustly detaineth from him, &c. And whereupon the said *W. F.* by *W. W.* his attorney saith, that whereas the aforesaid *J.* the 22d day of April in the year

year of our Lord 1728, at *Westminster* aforesaid in the county aforesaid, by his certain writing obligatory acknowledged himself to be held and firmly bound unto the aforesaid *R. F.* in his life-time in the aforesaid 200*l.* to be paid to the aforesaid *R. F.* his executors or administrators, when he the said *J.* should be thereunto required: Nevertheless the aforesaid *J.* (although often required) the aforesaid 200*l.* to the aforesaid *R. F.* in his life-time, or, to the aforesaid *W. F.* after the decease of the aforesaid *R. F.* hath not paid, but hath refused to pay the same to the said *W. F.* and unjustly detaineth the same: Whereupon the said *W. F.* saith that he hath sustained damage to the value of 10*l.* and thereof he bringeth this suit, &c. And he bringeth here into court as well the writ ^{and} obligatory aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is on the day and year aforesaid, as also the letters testamentary of the aforesaid *R. F.* whereby it sufficiently appeareth to the court here, that the aforesaid *W. F.* is the executor of the testament and last will of the aforesaid *R. F.* and thereupon to have administration, &c.

J. J. late of, &c. executor of the testament and last will of *E. B.* deceased, was summoned to answer *J. T.* of a plea, that he render to him 120*l.* which he unjustly detaineth from him, &c. And whereupon the said *J. T.* by *W. W.* his attorney saith, that whereas the above-named *E.* in her life-
Debt on a bond against the executor of the obligor.
time,

time, *to wit*, on the — day of —, in the year of our Lord —, at — in the county of — aforesaid, by her writing obligatory acknowledged herself to be bound to the said J. T. in the aforesaid 120*l.* to be paid to the same J. T. when she the said E. should be thereunto required; *Nevertheless* the said E. in her life-time, or the said J. J. after the death of the said E. although often required, have not, nor hath either of them paid the said 120*l.* to the said J. T. but they refused, and the aforesaid J. J. doth still refuse to pay him the same; and whereupon the said T. saith he is injured, and hath damage to the value of 10*l.* and thereof he bringeth his suit, &c. and he bringeth here into court the writing aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is on the same day and year aforesaid.

Plea,
Ne unques
executor.

And the said J. J. by F. B. his attorney cometh and defendeth the force and injury, when, &c. and saith, that the said J. T. ought not to have or maintain his said action against him, because he saith, that he the said J. J. never was executor of the testament and last will of E. B. deceased, as the said J. T. by his said declaration above alleged, neither did he ever as an executor of the testament and last will of the said E. B. administer any of the goods and chattels which were the said E. B.'s at the time of her decease; and this he is ready to verify: Wherefore he prayeth judgment, if the said

J. T.

J. T. ought to have his said action against him, &c.

And the said J. saith, that he ought not to be precluded from having his aforesaid action against the said J. because he saith that the aforesaid J. hath, as executor of the testament and last will of the said E. B. administered divers goods and chattels which were of the said E. B. at the time of her decease, that is to say, at ———— aforesaid: And this he prayeth may be inquired of by the country, &c. *Replication.*

Cooke.

*Michaelmas term in the seventh year
of the reign of king George the
third.*

Surrey, J. L. late of Saint Olave in South-Delton a bail-
to wit, J. wark, in the county of Surrey bond at the suit
aforesaid, woolstapler, was attached by his of an attorney.
present majesty's writ of privilege issuing out
of this court, to answer to L. R. gentleman,
one of the attornies of his said majesty's
court of common bench here, according to
the liberties and privileges of the same court
for such attornies, and other ministers of the
same bench from time beyond the memory
of man used and approved in the same
court, in a plea of debt, and whereupon the
said L. in his proper person saith, that the
said J. hath not rendered to him the said L.
63 l. 2 s. of lawful money of Great Britain,
which he oweth to him, and unjustly de-
taineth,

taineth, for that whereas, on the 29th day of *June* in the 6th year of his present majesty's reign, the said *L.* (he being then one of the attornies of the said court of common bench) sued forth out of his majesty's said court of common bench here, *to wit*, at *Westminster* in the county of *Middlesex*, his said majesty's writ, called a writ of attachment of privilege, against the said *J. L.* woolstapler, directed to the sheriff of the said county of *Surrey*, by which said writ the said sheriff was commanded by his said majesty to attach the said *J. L.* if he should be found within his bailiwick and him safely keep, so that he might have him before his said majesty's justices at *Westminster*, on *Monday* next after three weeks from the day of *Saint Michael* then next following, to answer the said *L.* one of the attornies of his said majesty's court of common bench, according to the liberties and privileges of that court for such like attornies and other ministers of the same bench used and approved of in the same, from the time whereof there was not any remembrance to the contrary, in a plea of *trespass upon the case*, and that the said sheriff should have there that writ; which said writ afterwards, and before the return thereof, that is to say, on the 11th day of *August* in the year of our Lord 1766, at the said parish of *St. Olave, Southwark*, in the said county of *Surrey*, was delivered by the said *L.* to *J. R.* then, and continually afterwards until the return of the said writ, sheriff of the said county of *Surrey*, to be
executed

executed in due form of law; by virtue of which said writ the said *J. R.* afterwards, and before the return of the said writ, that is to say, on the said 11th day of *August* in the said year of our Lord last above-mentioned, at the said parish of *St. Olave Southwark* aforesaid, within his bailiwick, arrested the said *J. L.* and had and detained him there in his custody by virtue of the said writ, until the said *J. L.* afterwards, and before the return of the said writ, *to wit*, on the said 11th day of *August* in the year of our Lord 1767, at the parish of *St. Olave Southwark* aforesaid in the said county of *Surrey*, by his writing obligatory, commonly called a bail-bond, acknowledged him, *to be* to be held and firmly bound to the said *J. R.* by the name of *J. R.* esq; high sheriff of the county of *Surrey* aforesaid, in the sum of 63*l.* 2*s.* of good and lawful money of *Great Britain*, to be paid to the said sheriff when he should be thereto required, with a condition thereunder written, that if the said *J. L.* should appear before his said majesty's justices at *Westminster*, on the said *Monday* next after three weeks from the day of *Saint Michael*, to answer the said *L.* one of the attornies, and so forth, in the said plea of trespass upon the case, that then that obligation to be void and of no force; otherwise to stand and remain in full force, vigour and effect; which said writing obligatory, with the said condition there under written, was taken by the said sheriff by virtue of the said writ, and by force of the statute in

such case lately made and provided. And the said *L.* in fact saith, that the said *J. L.* did not appear before his said majesty's justices at *Westminster*, on the said *Monday* next after three weeks from the day of Saint *Michael*, in the condition aforesaid mentioned, to answer to the said *L.* in his said plea of trespass upon the case, according to the form and effect of that condition, whereby that writing obligatory became forfeited to the said *J. R.* and the same being so forfeited, and the money therein mentioned, or any part of it, not being paid, he the said *J. R.* sheriff of the said county of *Surrey* afterwards, that is to say, on the first day of *November* in the year of our Lord 1737, at the said parish of Saint *Olave Southwark*, assigned to the said *L.* the said writing obligatory, by indorsing the same, and attesting it under his hand and seal in the presence of two credible witnesses, *to wit*, *E. H.* and *G. N.* according to the form of the statute in such case made and provided; by reason of which said premisses, and by force of the statute in such case made and provided, an action hath accrued to him the said *L.* as assignee of the said *J. R.* sheriff of the said county of *Surrey*, to demand and have of the said *J. L.* the said sum of 63*l.* 2*s.* Nevertheless the said *J. L.* (although often requested) hath not rendered the said sum of 63*l.* 2*s.* to the said *L.* but hitherto always hath refused, and still doth refuse, to render the same to the said *L.* and the aforesaid sum of money mentioned in the said writing

writing obligatory is still remaining unsatisfied, to the damage of him the said *L.* of 40*s.* and thereof he bringeth suit, &c. And the said *L.* bringeth here into court the writing obligatory aforesaid, in form aforesaid indorsed, which testifieth the said debt in manner aforesaid, and beareth date the day and year in that respect above-mentioned, &c.

John Doe, }
and } Pledges for prosecuting
Richard Roe, }

Hilary term, &c.

London, *O. W.* late of London, linen-dra- *Declaration in debt Qui tam on the stat. 8 Anne, c. 9. s. 35. For not inserting in indentures of apprenticeship the full sum received.*
to wit, per, was summoned to answer our lord the king, and *J. C.* who as well for our said lord the king as for himself prosecuteth in this behalf, of a plea that he render to our said lord the king and the said *J. C.* who as well, &c. 1260*l.* which to our said lord the present king and the said *J. C.* who as well, &c. he oweth and unjustly detaineth, and whereupon the said *J. C.* who as well for our said lord the king as for himself prosecuteth in this behalf by *W. W.* his attorney, saith, that by a certain indenture made at London aforesaid, *to wit,* in the parish of Saint Mary le Bow in the ward of Cheap, after the first day of May in the year of our Lord 1710. *to wit,* on the 21st day of August in the year of our Lord 1763. between one *T. H.* son of *W. H.* late of *C.* in the
M m 2 county

county of *Derby*, esq; deceased, and the said *O. W.* and in due manner executed, bearing date on the same day and year, the said *T.* put himself apprentice to the said *O.* by the name of *O. W.* citizen and leather-seller of *London*, to be instructed in his art and business of a linen-draper, to serve as an apprentice from the day of the date of the said indenture, until the full end and term of seven years from thence next ensuing fully to be complete and ended; which said indenture, then and there made and executed, contained all the covenants, articles, contracts and agreements, relating to the serving the said apprenticeship; and that in consideration of the premises, and for and in respect of the said apprenticeship, the said *T.* then, *to wit*, on the said 21st day of *August* in the said year of our Lord 1763. at *London* aforesaid, in the parish and ward aforesaid, paid to the said *W. O.* 300 pieces of coined gold money of *Great Britain*, called guineas, of the value in ready money of 315*l.* as a reward and consideration for taking the said *T.* to be his apprentice, as aforesaid; and that the said sum of money of 300 pieces of coined gold so given and paid, as aforesaid, was not truly and fully inserted, written and specified in the same indenture, according to the form of the statute in such case lately made and provided, but in the place of it the sum of 300*l.* only was inserted, written and specified in the same indenture, contrary to the form and effect of that statute, whereby an action has accrued to our said lord the king

king and the said J. C. who. as well, &c. to demand and have of the said O. 630*l.* parcel of the said 1260*l.* being double the sum so given and paid as aforesaid. *And also* Second count. *whereas* by one other indenture made at *London* aforesaid, in the parish and ward aforesaid, after the first day of *May* in the year of our Lord 1710. aforesaid, *to wit*, on the said 21st day of *August* in the year of our Lord 1763. between one T. H. another son of the said W. H. late of C. in the county of *Derby*, esq; deceased, and the said O. W. and in due manner executed, bearing date on the same day and year, the said last-mentioned T. put himself apprentice to the said O. W. to be instructed in his said art and business of a linen-draper, to serve him after the manner of an apprentice, from the day of the date of the said last indenture, until the full end and term of seven years from thence next ensuing and fully to be complete and ended; which said last indenture, then and there made and executed, contained all the covenants, articles and agreements relating to the serving the said apprenticeship last mentioned; and that in consideration of the premisses, and for and in respect of the said apprenticeship last mentioned, the said T. then, *to wit*, on the said 21st day of *August* in the said year of our Lord 1763. at *London* aforesaid in the parish and ward aforesaid, paid to the said O. W. 315*l.* of lawful money of *Great Britain*, as a reward and consideration for taking the said last mentioned T. to be his apprentice as aforesaid; and that the said sum of 315*l.*

so given and paid as aforesaid, was not truly and fully inserted, written and specified in the said last indenture, according to the form and effect of the statute in such case lately made and provided, but in the place thereof the sum of 300*l.* only was inserted, written and specified in the said last indenture, contrary to the form and effect of that statute, whereby an action has accrued to our said lord the king and the said *J. C.* who as well, &c. to demand and have of the said *O. W.* other 630*l.* residue of the said 1260*l.* being double the last mentioned sum so given and paid as aforesaid; Yet the said *O. W.* (although often required) hath not yet rendered the said 1260*l.* or any parcel thereof, to our said lord the king and the said *J. C.* who as well, &c. or to either of them, but hath hitherto refused, and still doth refuse, to render the same to them, to the damage of the said *J. C.* who as well, &c. of 10*l.* And thereof as well for our lord the king, as for himself, he bringeth suit, &c.

Debt against a Sheriff for an escape. London, to wit, *H. H.* late of London, knight, and *R. A.* late, &c. esq; were summoned to answer unto *R. C.* in a plea that they render to him 13*l.* which they owe, and unjustly detain from him, &c. and whereupon the said *W.* by *J. T.* his attorney saith, that whereas the said *W.* by the name of *W. C.* otherwise, to wit, in the term of the holy Trinity in the 6th and 7th years of the reign of the lord the now king, in the court of our lord the now king of the
common

common bench at *Westminster*, before Sir knight and his companions, then justices of our lord the king of the same bench at *Westminster*, did recover by judgment of the said court against *T. B.* by the name of *T. B.* 13*l.* for damages, which he the said *W. C.* hath sustained by reason of the said *T.*'s not performing certain promises and undertakings then lately made to the said *W.* as for his costs and charges by him laid out about the said suit whereof the said *T.* is convicted, as by the record and proceedings thereof remaining in the said court may more fully appear; and the said *W. C.* afterwards, ~~to wit~~, the 13th day of *June* in the fifth year of the reign of the lord the now king, prosecuted out of the said court of common bench, of and upon the said judgment, a certain writ of the lord the now king, directed to the sheriffs of *London*, by which writ the lord the now king commanded them that they should take *T. B.* if he was to be found in their bailiwick, and him safely keep, so that they might have his body before the justices of our lord the king at *Westminster*, in————— to satisfy *W. C.* for 13*l.* which in the court of the lord the king, before the justices of our lord the king at *Westminster*, had been awarded to the said *W. C.* for his damages which he had sustained by reason of the not performing several promises and undertakings made by the said *T.* to the said *W.* at *W.* whereof he was convicted. And reciting, whereas the sheriff of the lord the king, of *Middle-*

sex had returned to the justices of the lord the now king at *Westminster*, in — — — then last past, that the said *T.* was not to be found in his bailiwick; and in as much as it was sufficiently testified in the said court of the lord the king, that he lurked and wandered up and down in their bailiwick, and that they should have there that writ, which writ prosecuted as aforesaid the said *W. C.* afterwards, and before the return thereof, *to wit*, on the 30th day of *June* in the same 7th year of the lord the now king, at *London* aforesaid, in the parish of *St. Mary Le Bow* in the ward of *Cheap*, delivered to the said *H. H.* and *R. A.* then being sheriffs of *London* in due form of law to be executed; by virtue of which writ the said *H. H.* and *R. A.* then being sheriffs of *London* as aforesaid, afterwards, and before the return of the said writ, *to wit*, the same day and year at *London* aforesaid, in the parish and ward aforesaid, took and arrested the said *T.* and then and there had him in their custody in execution for the said damages; and the said *T.* being so as aforesaid in the custody of the said *H. H.* and *R. A.* then being sheriffs of *London*, in execution for the damages aforesaid, the said *H. H.* and *R. A.* then being sheriffs as aforesaid, the same day and year at *London* aforesaid, in the parish and ward aforesaid, without the licence and against the will of the said *W. C.* voluntarily permitted the said *T.* to go out of their custody at large where he would, the said *W. C.*

C. of his said damages then or yet not being satisfied, by reason whereof an action accrued to the said *W. C.* to demand and have of the said *H. H.* and *R. A.* the said sum of 13*l.* yet the said *H. H.* and *R. A.* have not, nor hath either of them rendered to the said *W. C.* the said 13*l.* but altogether have, and each of them hath hitherto refused, and yet do, and each of them doth yet refuse to render the said 13*l.* to the said *W. C.* wherefore he saith that he is damaged and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

London, to wit, *J. B.* late of London, *Declaration on*
 merchant, was attached to answer *R. S.* of *a policy of in-*
 a plea of trespass on the case, &c. and where- *surance on a*
 upon the said *R.* by *W. W.* his attorney *ship.*
 complaineth, that whereas the said *R.* the
 17th day of *October* in the year of our Lord
 1734. at *London* (that is to say) in the pa-
 rish of *St. Mary le Bow*, in the ward of
Cheap, according to the use and custom of
 merchants, caused to be made a certain writ-
 ing or insurance, commonly called a policy
 of insurance, by which said writing the said
R. by the name of *R. S.* as well in his own
 name as for and in the name and names of
 all and every other person or persons to
 whom the same did, might or should apper-
 tain in part or in all, did make assurance,
 and caused himself and them, and every of
 them, to be insured, lost or not lost, at and
 from *London* to *Rotterdam*, and thence to
Gambia

Gambia and *Cape Coast*, upon any kind of goods and merchandizes whatsoever, to be laden, or to be laden aboard the good ship or vessel called the *Dolphin*, whereof was master under God for that present voyage *J. N.* or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called, beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at *London* or elsewhere, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at *Rotterdam*, and during her stay there and thence to *Gambia*, and during her stay there and thence to *Cape Coast*, and the same there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that Insurance; the said goods and merchandizes by that agreement were and should be valued at ———, without farther account to be given by the assured for the same. Touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and counter-mart, surprizals, takings at sea, arrest, restraints and detainments of all kings, princes and people, of what nation, condition or quality

quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes, that had or should come to the hurt, detriment or damage of the said goods and merchandizes, or any part thereof; and in case of any loss or misfortune it should be lawful for the assured, their factors, servants or assigns, to sue, labour and travel for and about the defence, safe-guard and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the assurers, that that writing or policy of insurance should be of as much force and effect as the surest writing or policy of insurance thentofore made in *Lombard-street*, or in the *Royal Exchange*, or elsewhere in *London*, and so they the assurers were contented, and did thereby promise, and bind themselves each one for his own part, their heirs, executors, and goods, to the assured, their executors, administrators and assigns, for the due performance of the premises, confessing themselves paid the consideration due to them for that assurance by the assured, at and after the rate of 3*l.* 10*s.* *per cent.* and in case of loss (which God forbid) the assured to abate 10*l.* *per cent.* In witness whereof they the assurers have subscribed their names and sums assured in *London*, as by the said writing more fully appears; of which said writing the said J. afterwards,

afterwards, *to wit*, on the said 17th day of *October* in the said year of our Lord 1734, at *London* aforesaid, in the parish and ward aforesaid had notice, and thereupon the said *J.* afterwards, *to wit*, on the day and year last mentioned at *London* aforesaid, in the parish and ward aforesaid, in consideration that the said *R.* at the special instance and request of the said *J.* had then and there paid to the said *J.* the sum of 3*l.* 10*s.* of lawful money of *Great Britain* (being the reward of the assurance of 100*l.*) and had promised to perform all things in the said writing contained on the part of the assured, to be performed for the assurance of 100*l.* to be made by the said *J.* according to the tenor of the said writing, he the said *J.* took upon himself, and then and there faithfully promised to the said *R.* to become the assurer of the said *R.* for 100*l.* to perform all and singular the things in the said writing contained to be performed on the part of the assurer, according to the true intent and meaning of the said writing (the said sum of 100*l.* being the sum subscribed by the said *J.* to the said writing.) And the said *R.* in fact saith, that the said ship at the time of the making of the said writing, *to wit*, the said 17th day of *October* in the year 1734, was in safety, *to wit*, at *London* aforesaid, in the parish and ward aforesaid; and being so in safety afterwards, *to wit*, on the day and in the year last mentioned, the said ship last mentioned departed and sailed from *London* aforesaid, in the parish and ward aforesaid,

with

with the said goods and merchandizes loaded thereon, to sail to *Rotterdam* aforesaid, and from thence to *Gambia* and *Cape Coast* aforesaid in her said voyage; and the said *R.* further saith, that the said ship in her said voyage from *Rotterdam* aforesaid, before her arrival at *Cape Coast* aforesaid, to wit, the 29th day of *March* which was in the year of our Lord 1735, in sailing in her said voyage with goods and merchandizes loaded, and then on board her, to the value of 700*l.* of lawful money of *Great Britain*, upon the high seas was burnt and destroyed by fire, and the said ship and all the said goods and merchandizes were thereby then totally lost and destroyed, whereof the said *J.* afterwards, on the first day of *October* in the said year 1735, at *London* aforesaid, in the parish and ward aforesaid had notice, and the said *R.* then and there requested the said *J.* to pay to him the said *R.* 90*l.* parcel of the said 100*l.* assured by him the said *J.* as aforesaid (deducting 10*l.* the residue thereof) in respect of the said loss which the aforesaid *J.* ought to have paid to the said *R.* according to the said agreement; But the said *J.* not regarding his said promise and undertaking, but contriving, and fraudulently intending to deceive and defraud the said *R.* in this behalf, he the said *J.* (though often requested so to do) hath not paid to the said *R.* the said 90*l.* or any part thereof, nor hath in any kind contented him for the same, but hath altogether refused, and yet refuseth to pay to the said *R.* the said 90*l.*

or any part thereof, or in any manner to content him for the same.

A count for money had and received, damages 100 l.

Declaration on Assumpsit to deliver goods according to agreement, earnest being given.

London, to wit, J. P. late of *Westminster* in the county of *Middlesex*, chymist, was attached to answer unto N. G. in a plea, &c. That whereas the said J. on the 29th day of *October* in the year of our Lord 1734, at *London*, in the parish of *St. Mary Le Bow* in the ward of *Cheap*, had bargained and sold to the said N. 100 lb. weight of fine *Turkey Rhubarb*, at the rate of 23 s. per pound, amounting in the whole, according to that rate or price, to the sum of 115 l. the said J. the said 29th day of *October* at *London* aforesaid, in the parish and ward aforesaid, in consideration of 1 s. of good and lawful money of *Great Britain* to him the said J. by the said N. then and there in hand paid in part of payment, and of the sum of 114 l. 19 s. to the said J. by the said N. to be paid on the delivery of the said 100 lb. weight of fine *Turkey Rhubarb*, he the said J. did then and there undertake, and to the said N. then and there faithfully promise to deliver the said 100 lb. weight of the said fine *Turkey Rhubarb* upon the 30th day of the said month of *October* above-mentioned, at three of the clock in the afternoon of the same day at Mr. B.'s coffee-house; Yet the said J. not regarding his said promise and undertaking made as aforesaid, but contriving and fraudulently intending craftily

craftily and subtilly to deceive and defraud the said *N.* in this behalf, the said 100 lb. weight of fine *Turkey Rhubarb*, or any part thereof, to the said *N.* hath not delivered (although he the said *N.* was *always* prepared and ready upon the delivery of the said 100 lb. weight of fine *Turkey Rhubarb* in manner aforesaid, then and there to have paid the said *J.* the said 114 *l.* 19 *s.* which together with the said 1 *s.* paid by the said *N.* to the said *J.* as aforesaid amount to 115 *l.* (that is to say) 23 *s.* for every pound weight of the said 100 lb. weight of the said fine *Turkey Rhubarb*, according to the agreement aforesaid) but the said *J.* hath hitherto neglected and refused, and still doth neglect and refuse to deliver to the said *N.* the said 100 lb. weight of fine *Turkey Rhubarb*.

Count for money had and received.

London, *J. J. P.* late, *Esq.* was attached *Declaration on*
to answer unto *W. C.* in a plea of trespass *Assumpsit to*
upon the case, *Esq.* and whereupon the said *pay for a geld-*
W. by *R. B.* his attorney complains, that *ing let to a*
whereas on the — day of — in the *third person if*
year of our Lord 1734, at *London* aforesaid, *he did not re-*
in the parish of *St. Mary Le Bow* in the ward *turn it.*
of *Cheap*, in consideration that the said *W.* at *2 R. Raym.*
the special instance and request of the said *J.* *1085.*
would let to hire, and deliver unto a certain
person then and yet unknown to the said *W.*
a certain gelding of the said *W.* to ride from
London aforesaid to *Highgate* in the county of
Middlesex, and so back again to *London* afore-
said, he the said *J.* undertook, and then and
there

there faithfully promised the said *W.* to pay him 5*l.* 5*s.* if that person did not return the said gelding to the said *W.* the same day; and the said *W.* doth aver, that he, confiding in the aforesaid promise of the said *J.* afterwards, *to wit,* the same day and year aforesaid at *London* aforesaid, in the parish and ward aforesaid, at the said request of the said *J.* did let to hire, and deliver unto the said person so unknown to the said *W.* the said gelding of the said *W.* to ride from *London* aforesaid to *Highbate* aforesaid, and so back again to *London* aforesaid; and that the said person so unknown to the said *W.* did not the same day, or at any time afterwards, return the said gelding to the said *W.* whereof the said *J.* had notice, and therefore the said *J.* according to his aforesaid promise and undertaking, ought to have paid unto the aforesaid *W.* the said sum of 5*l.* 5*s.* Yet the said *J.* not regarding his aforesaid promise and undertaking, &c.

Trover by assignees of commissioners of bankruptcy. Wilts, *to wit,* *E. D.* late, &c. and *R. M.* late, &c. were attached to answer *J. G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case, &c. and whereupon the said *J.* and *R.* by *S. S.* their attorney complain, that they the said *J.* and *R.* on the — day of — in the year of our Lord — at *Bradford* in the said county of *Wilts*, were possessed of 30 broad cloths of the value of 600*l.* as of their own

own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt) and being thereof so possessed, they the said J. and R. the said 30 broad cloths out of their hands and possession casually lost and mislaid; which said 30 broad cloths afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, came to the hands and possession of them the aforesaid E. and R. by finding; and though the aforesaid E. and R. knew the aforesaid cloths to be the proper goods and chattels of the aforesaid J. and R. and to them as assignees of the debts, goods and chattels of the said S. L. the bankrupt, of right to belong and appertain: Yet they the aforesaid E. and R. contriving and fraudulently intending the aforesaid J. and R. of the aforesaid cloths, to deceive and defraud, have not, nor hath either of them delivered the aforesaid cloths, or any of them to the aforesaid J. and R. although they have by them been often requested to deliver the same; but they the aforesaid E. and R. afterwards, *to wit*, the day and year aforesaid at *Bradford* aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid J. and R. 600*l.* And thereof they bring suit, &c.

Middlesex, *to wit*, R. W. late of *West-* Declaration at
minster in the county aforesaid, esq; and D. *the suit of an*
L. late of the same, esq; late sheriff of the *infant by his*
county of *Middlesex*, were attached to answer *Prochein amy*
unto J. H. of a plea of trespass on the case, *against a false*
Vol. I. N n *&c. return, where-*

*by the plaintiff
was taken on
an attachment
for a rescous.*

Et. and whereupon the said *J. H.* by *J. H.* who is admitted by his majesty's court here to prosecute for the said *J. H.* who is within the age of 21 years, as the next friend of the said *J. H.* complaineth, that whereas on the 23d day of *January* in the term of *St. Hilary* in the seventh year of the reign of his present majesty, a writ of his said majesty issued out of his said majesty's court of common bench here, *to wit*, at *Westminster* in the said county, directed to the then sheriff of *Middlesex*; by which said writ the said sheriff was commanded, that he should take *J. H.* then late of *St. Giles's* in the said county, scavenger, and *J. D.* if they should be found in his bailiwick, and them safely keep, so that the said sheriff might have their bodies before the justices of his said majesty here, *to wit*, at *Westminster* aforesaid, from the day of *Easter* in 15 days then next following, to answer *T. B.* in a plea of trespass; and also that the said *J.* might answer the said *T.* according to the custom of the said court of Common Bench here, of a certain plea of trespass on the case upon promise, to the damage of him the said *T.* 20*l.* and that the said sheriff should then have there the said writ; which said writ afterwards, and before the return thereof, *to wit*, on the 9th day of *February* in the 7th year aforesaid, at *Westminster* aforesaid, was delivered to the said *R. W.* and *D. L.* then, and until and after the return of the said writ, being sheriff of the said county, to be executed in due form of law; *Yet* the said *R. W.* and *D. L.* then, and

until and after the return of the said writ, being sheriffs as aforesaid, not regarding the duty of the said office of sheriff of the said county, but contriving and fraudulently intending to injure and oppress the said *J.* in this particular, afterwards, *to wit*, at the return of the said writ, did falsly, and in deceit of the said court here return to and upon the said writ to the justices of his said majesty here, *to wit*, at *Westminster* aforesaid, that by virtue of his said writ to him directed, he made his warrant directed to *S. L. J. D.* and *R. R.* his bailiffs of the hundred of *Ossulston*, jointly and separately to take and arrest the said *J. H.* in the said writ named, by virtue of which said warrant the aforesaid *S. L.* afterwards, and before the return of the said writ, *to wit*, on the 1st day of *April* in the 7th year aforesaid, at the parish of *St. Giles's in the Fields* in the said county, within the said hundred of *Ossulston* in the said sheriff's bailiwick, did take and arrest the said *J. H.* according to the command of the said writ, and then and there kept him in safe custody, until *E. H.* wife of the said *J. H.* and the said *J.* by the name of *J. H. &c.* and divers other persons unknown to the said then sheriff, and to the said *S. L.* at the parish of *St. Giles* aforesaid, with force and arms in and upon the said *S. L.* the said then sheriff's bailiff aforesaid, made an assault, and beat, wounded and ill-treated him, and then and there rescued, and each and every of them did then and there rescue the said *J. H.* out of the custody of the said *S. L.* the

said then sheriff's bailiff aforesaid, against the said then sheriff's will, and against the will and without the consent of the said *S. L.* and him the said *J. H.* did permit to go at large where he pleased; and the said *J. H.* did then and there, with force and arms, rescue himself, and escaped out of the custody of the said *S. L.* the said then sheriff's said bailiff, against the said then sheriff's will, and without the consent of the said *S. L.* against the peace of the said lord the king; and afterwards and before the return of the said writ, the said *J. H.* was not found in the said then sheriff's bailiwick, and therefore the said then sheriff could not have the body of the said *J. H.* before his said majesty's justices at the day and place in the said writ mentioned, as by the said writ the said then sheriff was commanded; under pretence of which false return of the said writ, afterwards, *to wit*, on the 23d day of *October* in *Michaelmas* term in the 8th year of the reign of his said majesty, a writ of his said majesty issued out of his said majesty's court of common bench here, *to wit*, at *Westminster* aforesaid, according to the course and usage of the said court, directed to the now sheriff of the said county of *Middlesex*; by which writ the said now sheriff was commanded, that he should not omit because of any liberty in his said county, but that he should take the said *E.* the said wife of the said *J. H.* and the said *J.* if they were to be found in the bailiwick of the said now sheriff, and safely keep them, so that the said now sheriff

sheriff might have their bodies before his said majesty's justices here, *to wit*, at *Westminster* aforesaid, from the day of *St. Martin* in 15 days then next following, to answer to his said majesty of certain trespasses, rescues and contempts, certified by the said *R. W.* and *D. L.* late sheriff of the county of *Middlesex* aforesaid to his said majesty's justices at *W.* aforesaid, from the day of *Easter* in 15 days then last past, by virtue of which the said *J.* afterwards, and before the return of that writ, *to wit*, on the 11th day of *November* in the 8th year of the reign of his said majesty, at the said parish of *St. Giles's in the fields* in the county aforesaid, was attached, taken and imprisoned by *M. P.* and *J. S.* the said now sheriff of the said county of *Middlesex*, and kept in prison by them there for a long time, *to wit*, from thenceforth, until the space of 33 hours then next following; and the said *J.* by reason of the premises, was obliged to appear in the said court here, *to wit*, at *Westminster* aforesaid, at the return of the said writ, to answer to his said majesty for the said trespasses, rescues and contempts as aforesaid returned, according to the exigence of the said writ last above mentioned, and thereupon he the said *J. H.* with one *R. J.* and *W. L.* afterwards, *to wit*, on the 22d day of *November* in the term of *St. Michael* in the said 8th year of the reign of his said majesty, in his said majesty's court here, entered into a recognizance in the said court here, for the personal appearance of the said *J. H.* from the day of *St. Martin* in 15 days

then next following, to answer all such matters as should be then and there objected against the said *J. H.* and especially for his contempt on the rescous of the said *J. H.* returned by the said *R. W.* and *D. L.* the said late sheriff of *Middlesex* afore said, and so from day to day till the said *J. H.* should be discharged by the said court, and not depart the said court without leave of the same court; whereas the said *J. H.* in fact saith, that he is in no wise guilty of the said supposed rescous and contempt lately returned against him as afore said, by reason of which false return of the said writ above-mentioned so made by the said *R. W.* and *D. L.* then sheriff as afore said, the said *J. H.* not only bore and sustained a long imprisonment as afore said, but he hath been put unto divers great colts and expences, amounting in the whole to a great sum, *to wit*, to the sum of 40*l.* to the damage of the said *J. H.* 90*l.* Thereof he bringeth, suit, &c.

Declaration in case for unskillfully managing a ship, whereby she ran against a lighter and damaged plt.'s goods therein. London, *to wit*, *H. G.* late, &c. mariner, was attached to answer to *T. H.* in a plea of trespass upon the case, and whereupon the said *T.* by *G. N.* his attorney complaineth, that whereas the said *T.* on the 28th day of *December* in the year of our Lord 1735, at *London* afore said, was possessed of divers goods and merchandizes, *to wit*, of 1000 baskets of *Denia* raisins, of the value of 360*l.* then laden on board a certain lighter then being in the river *Thames*, and then moored at a certain key adjoining to the said river

Thames

Thames at *London* aforesaid; and whereas the said *H.* upon the said 28th day of *December* in the said year of our Lord 1735, at *London* aforesaid, was possessed of and master of a certain ship or vessel called the *Mary*, then being in the said river *Thames* near the said key; yet the said *H.* not being ignorant of the premisses, but devising and maliciously intending to hurt and injure the said *T.* in this behalf, upon the same day and year above-mentioned at *London* aforesaid, so ill, unskilfully and negligently managed, governed and directed his said ship or vessel, that for want of good care and management of the said *H.* of his said ship or vessel, the said ship or vessel of the said *H.* then and there pressed against the said lighter, and broke one of the sides of the said lighter, whereby the water then and there flowed into the said lighter so laden with the said raisins as aforesaid, and very much damaged and spoiled the said raisins so laden therein, whereby he saith he is prejudiced, and hath damage to the value of 100*l.* and thereof he bringeth suit, &c.

Yorkshire, to wit, *W. J.* innkeeper of a *Declaration* common inn in *Cloughton* in the county afore- *against an inn-* said, was attached to answer *W. K.* of a plea *keeper for lo-* of trespass upon the case; whereupon the said *W. K.* by *J. U.* his attorney complaineth, *sing a horse of* *his guest.* that whereas by the law and custom of *Eng-* land, innkeepers who keep common inns to entertain travellers passing along the country where such common inns are, and as guests

lodging in the same inns safely and securely by night and day, are bound to keep, without any loss or dimunition of their goods and chattels being within the said inns, so that by default of such innkeepers or of their servants no damage may in any wise happen to such guests; and also whereas the said *W. J.* on, and long before the 7th day of *November* in the 9th year of the reign of the lord the now king, and on the 1st day of *November* aforesaid did hold and keep, and yet doth hold and keep a common inn in *C.* aforesaid, in the county aforesaid; and the said *W. K.* the said 7th day of *November* in the said inn as a guest did lodge, the said *W. K.* then and there in the said inn having with him a certain mare of the said *W. K.* of the price of 5*l.* yet certain mildoes unknown to the said *W. K.* the said 7th day of *November* at *C.* aforesaid in the county aforesaid, in default of due keeping of the said *W. J.* and his servants, the mare of the said *W. K.* then and there put and placed in the said inn, under the custody of the said *W. J.* in the said inn of the said *W. J.* by the said *W. K.* a guest of the said *W. K.* in the said inn, took and carried away, and her detained from the said *W. K.* against the will of the said *W. K.* for a long time, *to wit*, for the space of one month, and then and there did her beat, bruise and lame, so that she became of no value, and other injuries to him did, to the great damage of the said *W. K.* and against the said law and custom. *And also whereas* by the law and custom of *England*, all inn-keepers

keepers, who keep common inns to entertain travellers passing along the country where such inns are, and as guests lodging in such inns, all their goods and chattels, and all the goods and chattels being in the lawful custody of such guests, being in the said inns night and day, are bound to keep without loss or diminution, so that for default of such inn-keepers or their servants no damage may in any wise happen to such guests, or to the goods and chattels which are in the lawful custody of such guests within the said inns; and whereas the said *W. J.* on, and long before the seventh day of *November* in the 9th year of the reign of the lord the now king, and on the first day of *November* aforesaid in the same year, in his said inn at *C.* aforesaid in the county aforesaid, in his said inn did lodge the said *W. K.* as his guest, the said *W. K.* then and there having in his lawful custody another mare of *H. H.* then and there being the proper mare of the said *H. H.* of the price of 5*l.* by the said *H. H.* to the said *W. K.* before that time there lent, safely to be redelivered to the said *H. H.* yet certain misdoers unknown to the said *W. K.* the said 7th day of *November* at *C.* aforesaid in the county aforesaid, in default of due keeping of the said *W. J.* and his servants, the said last mentioned mare then and there put and placed under the custody of the said *W. J.* in the said inn of the said *W. J.* by the said *W. K.* a guest in the said inn of the said *W. J.* took and carried away, and her
there

there detained from the said *W. K.* for a long time, *to wit*, the space of 11 days, and her then and there beat, bruised and lamed, so that she became of no value; by reason whereof the said *W. K.* paid the said *H. II.* a great sum of money, *to wit*, 21 s. in satisfaction of the injury done to the said mare; and he the said *W. J.* other injuries did to the said *W. K.* to the great damage of the said *W. K.* and against the said law and custom; whereupon the said *W. K.* saith, that he is injured, and hath damage to the value of 10*l.* and thereof he bringeth suit, &c.

Declaration in trespass for entering and hunting in a chase or warren, and killing game.

Cumberland, *to wit*, *F. T.* late, &c. was attached to answer *W. II.* in a plea wherefore he with force and arms entered into a free chase of the said *W.* at *M.* in the county aforesaid, and without his licence and consent in the same did hunt, and did take, kill and carry away hares, conies, pheasants and partridges; and also wherefore he with force and arms entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent did there hunt, and take, kill and carry away other hares, conies, pheasants and partridges, and other injuries to him did, to the great damage of the said *W.* and against the peace of our lord the king; and whereupon the said *W.* by *T. B.* his attorney complaineth, that the aforesaid *F.* on the — day of — in the — year of the reign of his present majesty, and on divers other days and times between that day and the 1st day of *March* in the — year of the reign

reign of his said majesty, with force and arms, &c. entered into the free chase of the said *W.* at *M.* aforesaid, and without his licence and consent did in the same hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheasants, *to wit*, 20 pheasants, and partridges, *to wit*, 20 partridges; and also that the said *F.* on the said several days and times aforesaid, with force and arms, &c. entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheasants, *to wit*, 20 other pheasants, and partridges, *to wit*, 20 other partridges, and other injuries, &c. to the great damage, &c. and against the peace, &c. whereupon the said *W.* saith that he is prejudiced, and hath received damage to the value of 20*l.* and thereof he bringeth suit, &c.

Derbyshire, *to wit*, *W. L.* late, &c. was * attached to answer *J. T.* of a plea of trespass upon the case, &c. and whereupon the said *J.* by *W. W.* his attorney complaineth, that

* Declaration in case for detaining plt.'s apprentice. Ld. Ch. Just. *Raymond* said, that if a man knows that an apprentice ran away from his master, and he keeps and employs him, the proper remedy is to bring an action for so much money paid to the plaintiff's apprentice in wrong of the Plaintiff. 2 *Lev.* 63. *Ses. Cas.* 292. *Barnard. K. B.* 312.

whereas *W.* the son of *W. M.* of, &c. by his certain indenture bearing date the — day of — in the year of our Lord — at — aforesaid, was justly and lawfully retained in the service of him the said *J.* after the manner of an apprentice, to be instructed in the art of a cutler, which the aforesaid *J.* then used, until the end and term of nine years from hence next ensuing and fully to be complete and ended. And the same *W. M.* the son served for the space of three years and upwards next after the said — day of — in the year aforesaid, in the service of him the said *J.* in his art aforesaid as an apprentice; nevertheless the aforesaid *W. L.* not ignorant of the premisses, but contriving craftily and subtilly to deceive and defraud him the said *J.* of the service of his said apprentice, and of all profit, advantage and gain, which he the said *J.* by reason of his apprentice aforesaid should and might have and gain, afterwards during the said term of nine years, *to wit*, on the first day of *July* in the year of our Lord — at — aforesaid in the said county, knowing * the aforesaid *W. M.* the son to be the apprentice of him the said *J.* did wrongfully intice and procure him the said *W. M.* the son to depart from the said service of him the said *J.* which said apprentice of the said *J.* afterwards, *to wit*, the same day and year, by

* In an action for inticing away an apprentice, it must be proved, that the defendant knew he was the plaintiff's apprentice. *57s. Cas* 292. *pl.* 223. *Barnard. & B.* 312.

reason of the said inticements and procurements of the said *W. L.* without any reasonable or probable cause whatsoever left the service of the said *J.* his master, and absented himself from his said service for a long time, *to wit*, for a month then next following, and the said *W. L.* injuriously detained and kept him the said *W. M.* the son from his service aforesaid during that time, against the will of the said *J.* *to wit*, at — aforesaid, whereby the said *J.* for all that time lost the service of his apprentice aforesaid; *And whereas* the said *W. M.* the son, afterwards, and during his said apprenticeship, *to wit*, on the 2d day of *August* in the year of our Lord — without any reasonable cause or just pretence absented himself from the service of his said master, *to wit*, at — aforesaid; nevertheless the said *W. L.* well knowing the premisses, but contriving and intending further to injure the said *J.* and to deprive him of the further use, service and benefit of his said apprentice *W. M.* the son, afterwards, *to wit*, on the said 2d day of *August* in the year of our Lord — aforesaid, at — against the will of the said *J.* injuriously received the said *W. M.* the apprentice into his service, and detained and kept him from the service of the said *J.* his master for a long time, *to wit*, from thenceforth until the 1st day of *January* then next following; whereby the said *J.* for all that time lost the service of his said apprentice, to the damage of the said *J.* of 4*0*l. And thereof he bringeth suit, &c.

Here-

*Declaration
for taking and
detaining pit.'s
wife.*

Herefordshire, *to wit*, *R. S.* was 'attached to answer *W. B.* gentleman of a plea, wherefore he took *S.* the wife of the said *W.* and keepeth her taken, &c. and whereupon the said *W.* by *J. C.* his attorney con plaireth, that the said *R.* on the first day of *June* in the year of our Lord 1734, at the parish of *Bodenham* in the county aforesaid, took the said *S.* the wife of the said *W.* and keepeth her yet taken, whereby he saith that he is prejudiced, and damnified to the value of 500*l.* and thereof he bringeth suit, &c.

*Declaration
for carrying
away plain-
tiff's wife,
goods and
chattels.*

Suffolk, *to wit*, *M. W.* late, &c. malster, was attached to answer to *S. F.* gent. in a plea, wherefore with force and arms he took and carried away *T.* the wife of the said *S.* together with the goods and chattels of the said *S.* of the value of 500*l.* pounds at *Stow-market* aforesaid, and detained the said *T.* the said wife of the said *S.* there from the said *S.* a long time, whereby the said *S.* lost the aid, comfort, fellowship, service and assistance of his said wife, and detained for a long time the said goods and chattels, and doth still detain the same, and did other wrongs to the said *S.* to the great damage of the said *S.* and against the peace of his present majesty, &c. And whereupon the said *S.* by *T. K.* his attorney complaineth, that the said *M.* on the 15th day of *May* in the year of our Lord 1733, at *S.* aforesaid in the county aforesaid, with force and arms, &c. took and carried away the said *T.* then and
now

now the wife of the said *S.* together with the goods and chattels of the said *S.* *to wit*, a gold watch, a watch-chain and picture set in gold, one pair of ear-rings of gold set with diamonds, two other gold rings, four gowns, four petticoats, one cloth cloak, one velvet hood, 20 holland shifts, two head-dresses of lace, and two other head-dresses of cambrick and lace, of the value of 200*l.* found at *S.* aforesaid; and detained the said *T.* the said wife of the said *S.* there from the said *S.* a long time, *to wit*, from the said 15th day of *May* in the said year of our Lord 1733, until the 18th day of *October* in the year of our Lord 1735, whereby the said *S.* during all that time lost the aid, comfort, fellowship, service and assistance of his said wife; and also during all the time aforesaid detained the said goods and chattels, and doth still detain the same, and did other wrongs, &c. to the great damage, &c. and against the peace, &c. whereby the said *S.* saith that he is injured, and hath damage to the value of 2000*l.* and thereof he bringeth suit, &c.

Devon, *to wit*, *G. F.* late, &c. was attached to answer *E. F.* of a plea, wherefore with force and arms he made an assault upon *M.* the wife of the said *E.* at *K.* in the said county, and her the said *M.* debauched, abused, carnally knew and got with child, whereby the said *E.* for a long time lost the comfort and affection, and also the
counsel,

counsel, assistance and service of his said wife in his domestic affairs, and did him other wrongs, to the great damage of the said *E.* and against the peace of our lord the king, &c. And whereupon the said *E.* by *T. W.* his attorney complaineth, that the said *G.* upon the 11th day of *November*, 1732, and at diverse other days and times between that day and the 4th day of *October* in the year of our Lord 1733, with force and arms made an assault upon *M.* then the wife of the said *E.* at *K.* aforesaid in the county aforesaid, and her the said *M.* then and there debauched, abused, carnally knew and got her with child, whereby the said *E.* for all the time aforesaid lost the comfort and affection, and also the counsel and assistance, and service of his said wife in his domestic affairs, and did him other wrongs, to the great damage of the said *E.* and against the peace, &c. Whereupon he saith he is injured, and hath damage to the value of 1000*l.* and thereof he bringeth suit, &c. *

*Declaration in
case for dila-
pidations in
not repairing
chancel, &c.*

Gloucestershire, *to wit*, *P. L.* late, &c. late rector of the parish church of *B.* in the said county of *G.* was attached to answer to *W. A.* clerk, now rector of that church, in a plea of trespass on the case, &c. and where upon the said *W. A.* by *T. M.* his attorney complaineth, that whereas all and singular rectors of churches within that part of his

* See more precedents in second volume.

majesty's kingdom of *Great Britain* called *England*, for the time being, ought by law well and sufficiently to repair, support and sustain the chancels of their churches, and the walls and fences of their church-yards, and all and singular the houses, edifices, buildings and structures of and belonging to their rectories, and the walls and fences of their glebe lands thereof, and relinquish, yield up and leave the same without any dilapidations, or want of reparation whatsoever, to their successors, rectors of such churches; and in default thereof are bound and ought to pay and satisfy their successors the full and true value of such dilapidations and want of reparations. *And whereas* the said *P.* was heretofore lawfully instituted, and inducted into the said rectory and parish church of *B.* and on the first day of *November* in the year of our Lord 1733, was the lawful rector thereof, and in right of the said rectory was seised of a mansion-house, called the parsonage-house in the said parish of *B.* with the barns, stables, out-houses, edifices, buildings, yards, courts, gardens and appurtenances thereunto belonging, and also of several pieces or parcels of glebe land parcel of the said rectory, and so continued until such time as herein after is mentioned, and afterwards, *to wit*, on the 25th day of the said month of *November* in the said year of our Lord 1733, freely resigned the said rectory and parish church into the hands of *E.* late lord bishop of *G.* deceased, then or-

dinary of that place, and thereupon the said church being vacant by means of such resignation; and the said *W. A.* afterwards, *to wit*, the 18th day of *December* in the year aforesaid, was upon such vacancy duly presented to the said church, and admitted, instituted and inducted into the same, and became, and hath continued, and now is the lawful rector of the said church, and the next successor of the said *P.* and the said *W. A.* in fact saith, that at the said time of the resignation of the said rectory and parish church by the said *P.* the chancel of the said parish church, and the walls and fences of the church-yards thereof, and the said mansion or dwelling-house called the parsonage-house, part of and belonging to the said rectory, the brew-house thereto adjoining, the barn, the stables, the coach-house, cart-house, the granary, the necessary-house, the chicken-house, and other out-houses, edifices and buildings belonging to the said mansion-house, the mound-walls round the garden and courts likewise belonging to the same house, the stone steps in the said garden and the rails on each side of such steps, and also the walls and fences of the glebe lands, part also of the said rectory, were very ruinous, and greatly dilapidated, and in decay for want of repairs, and were so left by the said *P.* when he resigned the said rectory and church as aforesaid, *to wit*, on the 25th day of *November* in the said year of our Lord 1733. And the said *W. A.* further saith, that the sum of money necessary
to

to be expended and laid out for the necessary repairs of the said premisses amounteth to, and at the time of the said resignation of the said rectory and parish church by the said *P.* amounted to 200*l.* of lawful money of *Great-Britain*, of which the said *P.* afterwards, *to wit*, on the 20th day of the said month of *December* in the said year 1733, at *B.* aforesaid, had notice: *Nevertheless* the said *P.* intending to defraud the said *W.* in this behalf, the said sum of 200*l.* or any part thereof, or any other sum of money sufficient for the necessary reparation of the said premisses, so left by the said *P.* dilapidated, and in such a ruinous condition for want of repairs as aforesaid, to the said *W.* hath not paid or satisfied, although the said *P.* was afterwards, *to wit*, the said 20th day of *December* in the year last above mentioned, at the said parish of *B.* in the said county of *G.* requested by the said *W.* so to do; but the said *P.* hath hitherto refused, and still refuseth to pay or satisfy the same, or any sum of money whatsoever to the said *W.* for such want of repairs and dilapidations as aforesaid, to the damage of the said *W.* of 200*l.* and thereof he bringeth suit, &c.

Northamptonshire, *to wit*, *T. K.* late, *Declaration in*
&c. was attached to answer to *R. B.* who *prohibition.*
prosecuteth in this behalf as well for the king
as for himself in a plea, wherefore he the said
T. hath followed a plea against the said *R.*
in the spiritual court against the king's pro-
hibition, &c. and whereupon the said *R.*

who as well, &c. by T. S. his attorney complaineth, that whereas the parish of *Towcester* aforesaid is, and from the time beyond the memory of man was an ancient parish, within which parish for all that time there was and is an ancient parish church and whereas he the said R. B. now is, and for divers years last past was seised in his demesne as of fee of and in an ancient messuage, with the appurtenances, in the parish of *Towcester* aforesaid, now or late in the tenure or occupation of L. R. and he the said R. B. and all those whose estates he had and hath of and in the said messuage, with the appurtenances, from time beyond the memory of man have at their own costs repaired one seat or form in the said church, which seat or form hath been lately taken in and made parcel of a pew in the said church, and therefore have had and used for themselves and family inhabiting in the said messuage the sole and separate use of the said seat or form, for the hearing and attending of divine service in the said church. *And whereas* all pleas and suits of and concerning customs and prescriptions within this realm, and the cognizance of such pleas and suits, specially belong and appertain to his majesty and his royal crown, and not to the court Christian, and by the common law of the land of this kingdom of *England*, and not by the ecclesiastical laws or censures, ought to be tried, determined and discussed, and always hitherto were wont and ought: Nevertheless the said T. K. well knowing the premises, but contriving

triving unjustly to grieve the said *R. B.* and to disherit his said majesty and his royal crown, and to bring the cognizance of a plea which specially belongs to his present majesty and his royal crown to another sort of trial in the court Christian before the venerable *G. R.* doctor of laws, lawfully deputed vicar general in spirituals, and principal official of the reverend father in Christ and lord *R.* by divine permission bishop of *Peterborough*, or his surrogate, hath impeached and controverted his suit, the right, title and possession of the said *R. B.* to the said seat or form, now parcel of the said pew; and although the said *R. B.* hath pleaded and alleged all and singular the matters above by him here suggested in the said court Christian before the said spiritual judge, in maintenance of his said right and possession of the said seat or form in the said pew, and offered to prove the same by inevitable testimony; Yet the said spiritual judge wholly refused to admit the said allegation and proof, and the said *T. K.* endeavoureth and daily contriveth to cause the said *R. B.* to be condemned in the premisses in the said court Christian, before the said spiritual judge, in contempt of his said present majesty, and to the manifest damage, prejudice, impoverishment and grievance of the said *R. B.* and against the common law of *England*. And although he the said *R.* afterwards, *to wit*, on the 20th day of *January* in the year of our Lord 1733, at the parish aforesaid, delivered to the said *T. K.* the king's writ of

prohibition to the contrary thereof; Nevertheless the said *T. K.* hath not ceased to follow his said suit in the said spiritual court, but hath since that time prosecuted and still prosecuteth his said suit there, notwithstanding the said writ of prohibition so delivered to him as aforesaid, in contempt of his said majesty, and to the great damage and grievance of the said *R.* and against the said prohibition; whereupon the said *R.* who as well, &c. saith that he is injured, and hath damage to the value of 40*l.* and thereof he as well for the king as for himself bringeth suit, &c.

*Declaration in
debt for rent
reserved by
indentures, at
the suit of the
heir.*

Westmoreland, *A. B.* late, &c. was summoned to answer *C. D.* son and heir at law of *E. D.* deceased, of a plea, that he render to him 14*l.* of lawful money of Great Britain, which he oweth to, and unjustly detaineth from him, &c. and thereupon the said *C.* by *W. R.* his attorney saith, that whereas the said *E.* in his life-time, *to wit*, on the 24th day of January in the year of our Lord 1726, at Kirby K. aforesaid, by a certain indenture then and there made between the said *E.* by the name of — (*as in the lease*) of the one part, and the said *A.* by the name of — (*as in the lease*) of the other, the other part of which indenture, sealed with the seal of the said *A.* the said *C.* bringeth here into court, the date whereof is the same day and year, demised, leased, let, and to farm let unto the said *A.* his executors, administrators and assigns, all his the said

said *E.*'s burgage house, messuage and tenement, situate, standing and being at or near *Strickland gate end* (*so recite the parcels as in the lease*) to have and to hold the said burgage house, messuage and tenement, barn, &c. and all and singular other the premises by the said indenture demised, with the appurtenances (except before excepted) unto the said *A.* his executors, administrators and assigns, from the 2d day of *February* next ensuing the day of the date of the said indenture, for and during and unto the full end and term of 21 years from thence next ensuing and fully, to be complete and ended; yielding and paying therefore yearly and every year during the said term, unto the said *E.* his heirs and assigns, the yearly rent or sum of 14*l.* of lawful money of *Great Britain*, at two days or times of payment in the year, that is to say, at *Whitsuntide* and *St. Martin* the bishop in winter, by even and equal portions; the first payment to begin and be made at *Whitsuntide* then next ensuing, as by the said indenture may more fully appear; by virtue of which said demise the said *A.* entered into the said demised premises with the appurtenances (except before excepted) and was possessed thereof for the term thereof demised as aforesaid, the reversion thereof, with the appurtenances, belonging to the said *E.* his heirs and assigns; and being so possessed, the reversion thereof belonging as aforesaid to the said *E.* afterwards, *so wit*, the first day of *April* in the year of our Lord 1733, at *K.* aforesaid

died seised of such his estate of and in the said reversion, at whose death the said reversion, with the appurtenances, descended to the said C. as son and heir of the said E. whereby the said E. became, and was seised of and in the said reversion with the appurtenances; and being so seised, and the said A. being so possessed of the said demised premises with the appurtenances, 14*l.* of the rent aforesaid, for one year ending at the feast of St *Martin* the bishop in the winter, in the year of our Lord 1734. to the said C. from the said A. became in arrear, and still remain unpaid, whereby an action hath accrued to the said C. to demand and have of the said A. the said 14*l.* yet the said A. (although often requested) hath not yet paid the said 14*l.* or any part thereof, to the said C. but to pay the same to him hitherto altogether hath refused, and still doth refuse, to the damage of the said C. 10*l.* and thereof he bringeth suit, &c.

*Declaration in
debt for rent
reserved by in-
denture &c. &c.
the assignee of
the lease.*

Middlesex, to wit, *J. L.* late of *Tottenham* in the county of *Middlesex*, esq; assignee of *J. S.* esq; otherwise lately called *J. S.* senior, of *London*, esq; was summoned to answer *G. B.* esq; in a plea, that he tender to him 6*l.* 12*s.* 6*d.* which he oweth to him, and unjustly detaineth, &c. and whereupon the said *G.* by *E. B.* his attorney saith, that whereas by a certain indenture made at *Tottenham* aforesaid, on the 17th day of *May* in the year 1716, between the said *G.* by the name of *G. B.* of *Leatherhead* in the county

county of *Surrey*, esq; of the one part, and the said *J. S.* by the name of *J. S.* senior, of *London*, esq; of the other part, the counterpart of which indenture sealed with the seal of the said *J.* the said *G.* bringeth here into court, bearing date the same day and year, for the consideration therein mentioned he the said *G.* did demise, grant and to farm let unto the said *J. S.* all that mansion-house, messuage, tenement, wash-houses, stables, out-houses, yards, gardens, orchards, fish-pond or canal, with the appurtenances, which were then lately in the tenure or occupation of *R. C.* his under tenants or assigns; and which said mansion-house and premises abutted eastward on a field called the *Royal Field*, belonging to *T. M.* of *London*, goldsmith, westward on *Tottenham* high road, northward on a barn and orchard belonging to the said *G. B.* in the tenure or occupation of the said *W. B.* and southward on a garden belonging to the said *G. B.* in the tenure or occupation of the said *W. B.* and also that little messuage and tenement built upon the wall belonging to the said mansion-house, fronting also upon the high road of *Tottenham* aforesaid, then also in the tenure or occupation of the said *W. B.* his under-tenants or assigns, together with all ways, easements, watercourses, commodities and appurtenances whatsoever to the said mansion-house, messuages or tenements belonging or in any wise appertaining; all which said premises are situate and being in the parish of *Tottenham High Cross* in the county

county of *Middlesex*; to have and to hold the said mansion-house, messuages or tenements, wash-houses, stables, out-houses, yards, gardens, orchards, fish-pond or canal, and all other the premisses, with their and every of their appurtenances above by the said indenture demised and granted unto the said J. his executors, administrators and assigns, from the feast-day of the Annunciation of the blessed virgin *Mary* last past before the date of the said indenture, for and during and unto the full end and term of 21 years from thence next ensuing and fully to be complete and ended; yielding and paying therefore yearly and every year during the said term unto the said G. his heirs and assigns, the yearly rent or sum of 26*l.* 10*s.* of lawful money of *Great Britain*, on the four feast-days or terms of payment in the year most usual, that is to say, at the feast of the Nativity of *St. John* the baptist, *St. Michael* the archangel, the birth of our Lord Christ, and the Annunciation of the blessed virgin *Mary*, by even and equal portions; the first payment thereof to begin and to be made upon the feast-day of *St. John* the baptist next ensuing the date of the said indenture, as by the said indenture more fully appeareth; by virtue of which demise the said J. entered into the said demised premisses with the appurtenances, and was thereof possessed; and being so possessed thereof, afterwards, *to wit*, on the 1st day of *April* in the year of our Lord 1734, all the said estate, right, title, interest and term of years of the said J. then

to come and unexpired, of and in the said demised premisses with the appurtenances, by an assignment came to the said *J. L.* by virtue of which assignment the said *J. L.* entered into the said demised premisses with the appurtenances, and was possessed thereof until the expiration of the said term of 21 years, *to wit*, until and upon the feast of the Annunciation of the blessed virgin *Mary* in the year of our Lord 1737, and 6*l.* 12*s.* 6*d.* of the rent aforesaid, for the last quarter of a year of the said term on that feast became due and in arrear from the said *J. L.* to the said *G.* by reason of which an action accrued to the said *G.* to demand and have of the said *J. L.* the said 6*l.* 12*s.* 6*d.* Nevertheless the said *J. L.* (although often requested) hath not rendered to the said *G.* the said 6*l.* 12*s.* 6*d.* or any part thereof; but hath hitherto wholly denied, and still doth deny to render the same to the said *G.* whereby the said *G.* saith that he is injured, and hath damage to the value of 40*s.* and thereof he bringeth suit, &c.

And the said *J. L.* by *J. D.* his attorney *Plen.* cometh and defendeth the force and injury, *Nothing in* when, &c. and as to the sum of 6*l.* 12*s.* 6*d.* *arrear.* which the said *G.* above by his said declaration supposeth to have been become due and in arrear for the rent of the said premisses from the said *J. L.* to the said *G.* upon the feast of the Annunciation of the blessed virgin *Mary* in the year of our Lord 1737, for the last quarter of a year of the said term on that feast in the said declaration mentioned,
the

the said *J. L.* saith that no part thereof is due and in arrear to the said *G.* as the said *G.* by his said declaration above suppoeth; and of this he putteth himself upon the country, &c.

*Decl. against
a hundred on
the statute of
hue and cry.
Stat. of Win-
chester, 13
Edw. 1. R. 2.
C. 1.*

Staffordshire, to wit, The inhabitants of the hundred of *Pirewill* in the county of *Stafford* were attached to answer as well to our sovereign lord the now king as to *H. W.* who as well for the same lord the king as for himself in this behalf sueth of a plea, wherefore whereas in a certain statute made in the parliament of the sovereign lord *Edward I.* late king of *England*, held at *Westminster* in the 13th year of his reign, (amongst other things) it is ordained, Forasmuch as from day to day robberies, murders, burnings of houses and theft were then more often used than they had been theretofore, and felons could not be attainted by the oaths of jurors, who had rather suffer strangers to be robbed, and to pass without pain, than to indict the offenders, great part of whom were people of the same country; or at least if the offenders were of another country, the receivers were of places near, and they did the same because an oath was not given unto jurors of the same country where such felonies were done; and as to the restitution of damages before that time, no pain had been limited for their concealment and laches; the said lord the late king, for to abate the power of felons, had established a pain in that case, so that from thenceforth, for fear of the pain
more

more than for fear of any oath, they should not spare any, nor conceal any felonies. And the said lord the late king did command, that cries should be solemnly made in all counties, hundreds, markets, fairs, and all other places where great resort of people was, so that none should excuse himself by ignorance, that from thencefore every country should be so well kept, that immediately, upon such robberies and felonies committed, fresh suit should be made from town to town, and from country to country; likewise when need is required, inquest should be made in towns by him that was lord of the town, and after in the hundred and in the franchise, and in the county, and sometimes in two or three or four counties, in case when felonies should be committed, in the marches of shires, so that the offenders might be attainted; and if the country would not answer for the bodies of such manner of offenders, the pain should be such, that every country, (that is to say) the people dwelling in the country, should be answerable for the robberies done, and all the damages, so that the whole hundred where the robberies should be done, with the franchises, being within the precinct of the same hundred, should be answerable for the robberies so done; and if the robbery should be done in the division of two hundreds, both the hundreds, and the franchises within them, should be answerable; and after that the felony or robbery was done, the countries should have no longer space than 40 days, within which
it

it should behove them to agree for the robbery or offence, or else that they should answer for the bodies of the offenders, as is plainly contained in the aforesaid statute; *And for that whereas* two certain robbers to the said *H. W.* unknown, on the 5th day of *May* in the 10th year of the reign of the said lord the now king, in the king's high way within the hundred of *Pirebill* aforesaid in the said county of *Stafford*, to wit, at a certain place near *Weston*, commonly called *Wodden Lane*, between *Weston* and *Amerton* in the parish of *Weston* in the said county of *Stafford*, within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, with force and arms upon him the said *Henry* made an assault, and 25*l.* in money of lawful money of *Great Britain*, of the proper monies of him the said *H. W.* and also a leather purse value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the said *H. W.* then and there found, of and from him the said *H. W.* did feloniously take and rob and carry away, against the said peace of our said lord the now king; and the said *H. W.* immediately after the felony and robbery aforesaid done at *Wodden Lane* aforesaid in the said parish of *Weston* within the hundred of *Pirebill* aforesaid in the county aforesaid, being near the said place where the same felony and robbery so as aforesaid was committed, did make hue and cry of the aforesaid felony and robbery upon him made, and then and there did give notice to the inhabitants of the parish

Stat. 27 Eliz.
c. 13.

rish of *Weston* aforesaid of the same felony and robbery; and did also, with as much convenient speed as might be after the aforesaid robbery on him committed as aforesaid, give notice thereof to *T. W.* then a constable of the said parish of *Weston* aforesaid in the said hundred of *Pirebill*, being near unto the place where the said robbery was committed as aforesaid, and describe in the aforesaid notice to the aforesaid constable, so far as the nature and circumstances of the case did admit, the said felons, and the time and place of the aforesaid robbery; and did also, within the space of 20 days next after the aforesaid robbery committed, cause public notice to be given thereof in the *London Gazette*, and did therein likewise describe, so far as the nature and circumstances of the said case did admit, the said felons, and the time and place of the aforesaid robbery, together with the said money, goods and effects whereof he the said *H.* was robbed as aforesaid, and afterwards did, and before the suing forth of the original writ of him the said *H.* to wit, on the 15th of *October* in the 11th year of the reign of the said lord the now king, he the said *H.* went before the sheriff of the county of *Stafford* aforesaid, and did then before the said sheriff enter into a bond to *T. B.* and *J. G.* then being high constables of the hundred of *Pirebill* aforesaid, in the penal sum of 100*l.* with two sufficient sureties, to wit, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the same place, carpenter, approved by the said sheriff,

Stat. 8 Geo.
2. c. 16.

Stat. 27 Eliz.
c. 13. f. 11.

riff, with condition for securing to the said high constables the due payment of their costs, after the same should be taxed by the proper officer, in case that he the said *H. W.* should happen to be nonsuited, or should discontinue his action to be brought against the said inhabitants of the hundred of *Pirebill* aforesaid, on account of the aforesaid robbery; or in case that judgment should be given against him the said *H. W.* on demurrer, or that verdict should be given against him therein, according to the form and directions of the statute in such case lately made and provided; and after the felony and robbery aforesaid done, and within 20 days next before the day of the suing forth of the said original writ of him the said *H. W.* the said *H. W.* before *T. W.* esq; then one of the justices of our said lord the now king assigned to keep the peace of our said lord the now king, in and for the county of *Stafford* aforesaid, then inhabiting at *Haywood* in the parish of *Colwick*, within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, was examined upon his corporal oath, according to the form of the statute in that case made and provided, and the said *H. W.* upon his said oath before the said *T. W.* then and there said, that he did not know the parties who had committed the aforesaid robbery, or either of them; and after the felony and robbery upon him made as aforesaid, and after the said public notice given of the aforesaid robbery in the aforesaid *London Gazette*, 40 days of the suing forth of the

the

the said original writ of the said *H.* were past; yet the said inhabitants of the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, have not hitherto made to the said *H. W.* satisfaction for the robbery and damages aforesaid, nor the bodies of the felons and malefactors aforesaid, nor the bodies of either of them, have taken, nor for the bodies of them, nor for the bodies of either of them hitherto have answered, but the same felons and malefactors have permitted to escape, in contempt of the said lord the now king, and to the great damage of him the said *H. W.* and against the said form of the statute aforesaid in the aforesaid 13th year of the reign of the said late lord king *Edward I.* in such case made and provided; and whereupon the said *H.* who as well for the said lord the now king as for himself in this behalf sues, by *R. D.* his attorney complaineth, that certain robbers, *to wit*, two men, to the same *H. W.* unknown, on the aforesaid 5th day of *May* in the aforesaid 10th year of the reign of the said lord the now king, in the king's high way within the hundred of *Pirehill* aforesaid in the county of *Stafford* aforesaid, *to wit*, at a certain place near *Weston* aforesaid, commonly called *Wodden Lane*, between *Weston* and *Amerton* in the parish of *Weston* in the said county of *Stafford*, within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, with force and arms, *to wit*, with pistols, swords, staves and knives, in and upon him the aforesaid *H.* did make an assault, and 25 *l.*

in money of lawful money of *Great Britain*, of the proper monies of him the said *H. W.* and also a leather purse value 6*d.* of like lawful money of *Great Britain*, of the proper goods and chattels of him the said *H. W.* then and there found, of and from the said *H.* did feloniously take and rob and carry away, against the peace of our said lord the now king, &c. And the said *H.* immediately after the felony and robbery aforesaid done, *to wit*, on the said 5th day of *May* in the 10th year of the reign of the said lord the now king aforesaid, at *Wodden Lane* aforesaid in the said parish of *Weston* within the hundred of *Pirebill* aforesaid in the county aforesaid, which said place called *Wodden Lane* is, and then was near the said place where the said felony and robbery so as aforesaid was committed, did make hue and cry of the felony and robbery aforesaid upon him made, and then and there give notice to the inhabitants of the said parish of *Weston* of the same felony and robbery; and did also, with so much convenient speed as might be after the aforesaid robbery on him committed as aforesaid, that is to say, on the said 6th day of *May* in the 10th year aforesaid, give notice thereof to *T. W.* then a constable of the said parish of *Weston* aforesaid in the said hundred of *Pirebill*, being near unto the place where the said robbery was committed as aforesaid; and did describe in the aforesaid notice to the aforesaid constable, so far as the nature and circumstances of the case did admit, the said felons and the time and place
of

of the aforesaid robbery ; and did also, within the space of 20 days next after the aforesaid robbery committed, cause public notice to be given thereof in the *London Gazette*, and did therein likewise describe, so far as the nature and circumstances of the said case did admit, the said felons and the time and place of the aforesaid robbery, together with the said money, goods and effects whereof he the said *H.* was robbed as aforesaid, and afterwards, and before the suing forth of the original writ of him the said *H. to wit*, on the 15th day of *October* in the 11th year of the reign of the said lord the now king aforesaid, he the said *H.* went before the sheriff of the county of *Stafford* aforesaid, and did then before the same sheriff enter into a bond unto *T. B.* and *J. C.* high constables of the hundred of *Pirebill* aforesaid in the penal sum of 100*l.* with two sufficient sureties, *to wit*, *W. L.* of *Newport* in the county of *Salop*, taylor, and *G. J.* of the same place, carpenter, approved by the said sheriff, with the condition for securing to the said high constables the due payment of their costs, after the same should be taxed by the proper officer, in case that he the said *H. W.* should happen to be nonsuited, or should discontinue his action to be brought against the said inhabitants of the hundred of *Pirebill* aforesaid on account of the aforesaid robbery, or in case that judgment should be given against him the said *H. W.* on demurrer, or that a verdict should be given against him therein, according to the form and di-

rection of the statute in such case lately made and provided; and after the felony and robbery aforesaid done, and within 20 days next before the day of the suing forth of the original writ of him the said *H. W.* to wit, on the aforesaid 15th day of *October* in the 11th year of the reign of our said lord the now king aforesaid, he the said *H. W.* before the said *T. W.* esq; then one of the justices of the said lord the now king, assigned to keep the peace of the same lord the now king in and for the county of *Stafford* aforesaid, then inhabiting at *Haywood* in the parish of *Colwick* within the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid, was examined upon his corporal oath, according to the form of the statute in that case made and provided; and the said *W. H.* upon his said oath then and there before the said *T. W.* said that he did not know the parties who had committed the aforesaid robbery, or either of them, and after the felony and robbery upon him made as aforesaid, and after the said public notice given of the aforesaid robbery in the aforesaid *London Gazette*, 40 days of the day of suing forth of the said original writ of the said *H.* were past; Yet the said inhabitants of the hundred of *Pirebill* aforesaid in the county of *Stafford* aforesaid have not hitherto made to the said *H. W.* satisfaction for the robbery and damages aforesaid, nor the bodies of the said felons and malefactors aforesaid, nor the bodies of either of them have taken, nor for the bodies of them, nor for the bodies of either of them
hitherto

hitherto have answered, but the same felons and malefactors have permitted to escape, in contempt of the said lord the now king, and to the great damage of him the said *H. W.* against the form of the statute aforesaid, in the aforesaid 13th year of the reign of the said late lord king *Edward* the first in such case made and provided; whereupon the said *H. W.* who as well for the said lord the now king as for himself sueth, saith that he is injured, and hath damage to the value of 40*l.* and thereof he bringeth suit, &c.

And the said inhabitants of the hundred of *Pirebill* by, *H. D.* their attorney come and defend the force and injury, when, &c. and say, that they are no wise guilty of the premises above laid to their charge, as the said *H. W.* who as well, &c. above complaineth against them: And of this they put themselves upon the county; and the said *H. W.* who as well, &c. doth likewise the same: And thereupon the same *H. W.* saith, that the inhabitants in the hundred of *Pirebill* aforesaid, where the said robbery was committed, are parties defendants, against whom the said *H. W.* who as well, &c. above in form aforesaid complaineth, and for that cause craveth the writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause to come twelve, &c. of the vicinity of the hundred of *Offlow* in the county aforesaid, which said hundred of *Offlow* is the next hundred in the same county adjacent to the aforesaid hundred of *Pirebill*, to try the issue aforesaid above in form

Vide stat. 22
Geo 2 c. 24.
46.

plea,
Not guilty.

Issue.
Venire of the
next adjacent
hundred.

aforesaid joined: And because the said inhabitants in the aforesaid hundred of *Pirehill* do not deny this, it is granted to him; therefore the sheriff is commanded, that he cause to come here in eight days of the Purification of the blessed virgin *Mary* twelve, &c. of the vicinity of the hundred of *Oxlow*, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

D. br.

*Qui tam for
keeping a grey-
hound and kil-
ling a hare not
being qualified.*

Kent, *to wit*, *E. L.* late, &c. was summoned to answer to the poor of the said parish of *P.* in the county aforesaid, and to Sir *J. S.* baronet, who sueth in this behalf as well for himself as for the said poor of the said parish of *P.* aforesaid of a plea, that he render to the said poor and the said *J. S.* who sueth as aforesaid, 10*l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from them, &c. And thereupon the said Sir *J.* who sueth as aforesaid by *H. C.* his attorney saith, that the said *E.* on the 13th day of *March* in the year of our Lord 1736, at and in the parish of *E.* aforesaid did keep a certain greyhound for the destruction of the game of this kingdom, he the said *E.* then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form of the statute in such case made and provided, whereby, and by force of the statute in such case lately made and provided, an action hath accrued to the said poor of the parish aforesaid, and to the said Sir *J.* who sueth as aforesaid, to demand
and

and have of the said *E.* for his said offence 5*l.* parcel of the said 10*l.* and the said Sir *J.* who sueth as aforesaid, further saith, that the said *E.* on the 30th day of *March* in the year aforesaid in the said parish of *E.* in the county aforesaid, did with a certain greyhound kill one hare, he the said *E.* then not being a person qualified to kill game, against the form of the statute in such case lately made and provided, whereby, and by force of the statute in such case lately made and provided, an action hath accrued to the said poor of the parish aforesaid, and to the said Sir *J.* who sueth as aforesaid, to demand and have of the said *E.* for his said last mentioned offence 5*l.* residue of the said 10*l.* Yet the said *E.* (although often requested) hath not yet paid the said 10*l.* or any part thereof, to the said poor and the said Sir *J.* who sueth as aforesaid, or to either of them; but he to pay the same to the said poor and the said Sir *J.* who sueth as aforesaid, hitherto wholly hath refused and still doth refuse to the said Sir *J.* who sueth as aforesaid, his damage of 10*l.* and thereof as well for the said poor as for himself he bringeth suit, &c.

And the said *E. L.* by *R. P.* his attorney *Plea,* cometh and defendeth the wrong and injury, Nil debet: when, &c. and saith that he doth not owe to the said Sir *J.* who as well, &c. the said sum of 10*l.* or any part thereof, in manner and form as the said Sir *J.* who as well, &c. above thereof complaineth against him: And of this he putteth himself upon the

country; and the said Sir J. who sueth as
aforesaid, doth likewise the same; therefore,
&c.

*Judgment for
not entering
issue.*

And the said Sir J. S. although solemnly
called came not, nor hath entered his said
issue, nor hath further prosecuted his writ:
Therefore he and his pledges of prosecution
are thereupon amerced, &c. and the names
of the pledges of the said Sir J. are, &c.
and that the said E. L. depart without day,
&c. It is also considered, that the said E.
do recover against the aforesaid Sir J. his
damages by reason of the premises, to 3*l.*
16*s.* 8*d.* to the said E. by the discretion of
the justices here adjudged at his request for
his costs and charges in this behalf sustained,
according to the form of the statute in such
case made and provided.

*Declaration
for shooting a
greyhound.*

Leicestershire, *to wit*, H. R. late, &c.
was attached to answer B. D. in a plea,
wherefore with force and arms a certain
greyhound bitch, and a certain other bitch
of the said B. of the price of 10*l.* at M.
aforesaid in the county aforesaid, with a gun
he shot at and killed, whereby the said B. not
only lost the said bitches, but also certain
young whelps, *to wit*, five young whelps of
the said greyhound bitch, and certain young
whelps, *to wit*, five young whelps of the
said other bitch, which died for want of the
said bitches to suckle them, *to wit*, at M.
aforesaid; and a certain other greyhound
bitch, and a certain other bitch of the said B.
lately found at M. aforesaid, of the price of

10*l.* he shot at, hit, struck, smote and wounded, by means whereof the last mentioned two bitches afterwards at *M.* aforesaid died, whereby the said *B.* not only lost the said two last mentioned bitches, but also certain other young whelps, *to wit*, five other young whelps of the said last mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two last mentioned bitches, which afterwards died for want of the two last mentioned bitches to suckle them, *to wit*, at *M.* aforesaid; and did other wrongs to the said *B.* to the great damage of the said *B.* and against the peace of our sovereign lord the king that now is, &c. And whereupon the said *B.* by *J. B.* his attorney complaineth, that the said *H.* on the 15th day of *January* in the year of our Lord 1736, with force and arms, &c. a certain greyhound bitch, and a certain other bitch of the said *B.* of the price of 10*l.* then found at *M.* aforesaid with a gun he shot at and killed, whereby the said *B.* not only lost the said bitches, but also certain young whelps, *to wit*, five young whelps of the said greyhound bitch; and certain young whelps, *to wit*, five young whelps of the other of the said bitches, which afterwards, *to wit*, the same day and year at *M.* aforesaid died for want of the said bitches to suckle them; and a certain other greyhound bitch, and a certain other bitch of the said *B.* then found at *M.* aforesaid of the price of 10*l.* shot at, hit, struck, smote and wounded; by means whereof the last mentioned

tioned two bitches afterwards, *to wit*, the same day and year at *M.* aforesaid died, whereby the said *B.* not only lost the two last mentioned bitches, but also certain other young whelps, *to wit*, five young whelps of the last mentioned greyhound bitch; and certain other young whelps, *to wit*, five young whelps of the other of the two last mentioned bitches, which afterwards, *to wit*, the same day and year died for want of the two last mentioned bitches to suckle them, *to wit*, at *M.* aforesaid, and did other wrongs to the said *B.* to the great damage of the said *B.* and against the peace of our said sovereign lord the king that now is, whereby the said *B.* saith that he is injured and damnified, to the value of 10*l.* and thereof he bringeth suit, &c.

Pla.
Defendant ju-
stifies as keeper
of a park.

And the aforesaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury, when, &c. And as to the coming with force and arms, and the whole trespass aforesaid above supposed to be done, except the shooting at, and killing of the said greyhound bitch in the said declaration first mentioned, saith that he is not guilty: And of this he putteth himself upon the country; and the said *B.* likewise, &c. And as to the shooting at, and killing of the said greyhound bitch in the said declaration first mentioned above supposed to be done, the aforesaid *H.* saith, that the said *B.* ought not to have his aforesaid action thereof against him, because he saith, that Sir *W. D.* bart. long before

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before the said time, when, *E. c.* and at the same time, when, *E. c.* was, and still is possessed of and in a certain antient park called *B.* park in *M.* aforesaid; in which said park, long before the said time, when, *E. c.* and at the said time, when, *E. c.* were great numbers of deer; of which park the aforesaid *H.* before the said time when, *E. c.* and at the said time when, *E. c.* was keeper, and had the care and custody thereof. And the said *Sir W.* being so as aforesaid possessed of the said park, the said greyhound bitch at diverse times before the said time, when, *E. c.* was used to haunt the said park, and to hunt, chase and drive the said deer, in order to bite, wound and kill them, to the great hurt and damage of the said deer; and at the same time, when, *E. c.* was in the aforesaid park for the purpose aforesaid; whereupon the aforesaid *H.* as keeper and servant of the aforesaid *Sir W.* and by his command, at the said time, when, *E. c.* in the said park, for the preservation of the said deer, there did shoot at, and kill the said greyhound bitch there, as it was lawful for him to do, which is the same shooting at and killing of the said greyhound bitch in the said declaration first mentioned, whereof the said *B.* doth above in that behalf complain against him: and this he is ready to verify: Whereupon he prayeth judgment, if the said *B.* ought to have his aforesaid action thereof against him, *E. c.*

And the said *T. K.* by *C. G.* his attorney *Plea to a prohibition.*
someth and defendeth the force and injury,
when,

First issue.

when, &c. and saith, that he did not prosecute or follow his said suit in the said spiritual court against the said *R. R.* against the prohibition of our said lord the king to him directed and delivered in manner and form as the said *R.* who sueth as well for the king as for himself, by his writ and declaration aforesaid hath above supposed: And of this he putteth himself upon the country; and the said *R.* who as well, &c. likewise, &c. And for the obtaining the writ of our lord the king of consultation in this behalf, he the said *T.* saith, that long before the prosecution of the said suit in the said spiritual court against the said *R.* he the said *T.* was and now is seised of a certain antient messuage with the appurtenances, in *Park Lane* in *Towcester* aforesaid, in his demesne as of fee, and that the said pew in the said church of *Towcester* in the said declaration mentioned, was and is an antient pew, without the addition of any seat or form in the said church within the memory of man taken in or made parcel of the said pew; and that he the said *T.* and all those whose estate he hath in the said messuage with the appurtenances, and their tenants thereof, from the time whereof the memory of man is not to the contrary, have and hath sustained, amended and repaired the said pew as often as need required, at his and their own proper costs, and by reason thereof from the time aforesaid he and they, and such other person and persons as he and they hath and have from time to time licensed to sit therein,

in, hath and have used and been accustomed to sit therein to hear divine service and preaching the word of God in the said church as in a pew belonging to the said messuage with the appurtenances, so that no other person from the time aforesaid in time of divine service and preaching the word of God in the said church, hath had any seat or place in the said pew without the licence or against the will of the said T. or of those whose estate he hath in the said messuage with the appurtenances, or of his or their tenants thereof for the time being; neither could or ought such other person to sit therein, otherwise than by such licence as aforesaid. And the said T. saith, that he being so seised of, and dwelling in the said messuage with the appurtenances, the said R. who as well, &c. before the said prosecution in the said spiritual court, *to wit*, on the first day of *April* in the year of our Lord 1733, in time of divine service in the said church, without the licence and against the will of the said T. did intrude himself into the said pew, and disturbed him the said T. and his family and friends then and there being by and with the licence of him the said T. wherefore he the said T. for remedy in that behalf, before the prohibition of our said lord the king to the contrary thereof to him directed was delivered, did institute his said suit in the said spiritual court against the said R. as it was lawful for him to do; without that, that he the said R. who as well, &c. and all those whose estate he had and hath in the said ancient

tient messuage in the said declaration mentioned to be then, or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own costs repaired one seat or form in the said church lately taken in, and made parcel of a pew in the said church, and therefore have had and used, for themselves and family inhabiting in the said messuage, the sole and separate use of the said seat or form for the hearing and attending of divine service in the said church in manner and form as the said *R.* who as well, &c. by his said declaration hath supposed: And this the said *T.* is ready to verify, with this also, that the said *T.* will verify, that the pew in the said declaration mentioned, and the pew in the plea of him the said *T.* beforementioned, is one and the same pew, and not different: Wherefore he prayeth judgment, and the writ of our said lord the king of consultation in this behalf to be granted unto him.

*Replication in
prohibition.*

And the said *R. R.* saith, that the said *T. K.* ought not, for the reason by him alleged, to have his said majesty's writ of consultation in this behalf, because he saith, as before, that he the said *R.* who as well, &c. and all those whose estate he had and hath in the said ancient messuage in the said declaration mentioned to be then or late in the tenure or occupation of *L. R.* with the appurtenances, from time beyond the memory of man have at their own costs repaired

paired one seat or form in the said church lately taken in and made parcel of a pew in the said church, and therefore have had and used, for themselves and family inhabiting in the said messuage, the sole and separate use of the said seat or form for the hearing and attending of divine service in the said church, in manner and form as the said *R.* who as well, &c. by his said declaration hath alleged: And this he prayeth may be inquired of by the country; and the said *F. K.* doth the same: Therefore as well to try the said issue, as the aforesaid other issue between the said parties above joined, the Sheriff is commanded, &c. *Vide antea* *fol.*

And the said *H.* by *G. S.* his attorney cometh and defendeth the force and injury, when, &c. and prayeth the hearing of the said writing obligatory, and it is read to him in these words, *to wit*, Know all men, &c. [*the obligation*] and he prays also the hearing of the condition of the said writing obligatory, and it is read to him in these words, *to wit*, [*here enter the condition*] which being read and heard, he the said *H.* saith, that he by virtue of the said writing obligatory ought not to be charged with the said debt, because he saith, that after the 29th day of *September* in the year of our Lord 1664, and before the making the said writing obligatory, *to wit*, on the said first day of *July* in the said year of our Lord 1733, at *Westminster* aforesaid, he the said *H.* played with the said *S.* at a certain play with dice called *Hazard*, for diverse sums of money

Plea to a bond that it was given for money won at play.

Stat. 16 Car. 2. c. 7.

ney exceeding the sum of 100*l.* upon tick and credit, and not for ready money; and that he the said *H.* so playing with the said *S.* at the said play, then and there at one and the same time and meeting lost upon credit to and with the said *S.* in the whole a great sum of money, exceeding the sum of 100*l.* *to wit*, the sum of 500*l.* whereof no part was then paid by the said *H.* And the said *H.* afterwards thereupon, *to wit*, on the said first day of *July* in the year of our Lord 1733, aforesaid at *Westminster* aforesaid, made and delivered the aforesaid writing obligatory with the aforesaid condition thereto subscribed for the securing the payment of the said 500*l.* by him the said *H.* so lost; and by the said *S.* so as aforesaid at the said play won of the said *H.* at one and the same time and meeting, upon credit; whereby by force of the statute in such case made and provided the said writing obligatory wholly became and is void, and of no effect in law: And this he is ready to verify: Wherefore he prayeth judgment, whether he ought to be charged with the said debt by virtue of the said writing obligatory, &c.

Replication.

And the said *S.* saith, that by reason of any thing above by the said *H.* in pleading alledged, he ought not to be barred from having his said action against him, because he saith, that the said bond was not given for securing the payment of money won at the said play by the said *S.* of the said *H.* as the said *H.* hath above pleaded: And this he prayeth may be inquired of by the country;

try; and the said *H.* likewise; therefore,
Ec.

And the said *N.* and *I.* by *J. H.* their attorney come and defend the force and in jury, when, *Ec.* and say, that they did not undertake in manner and form as the said *J.* above complaineth against them: And of this they put themselves upon the country; and the said *J.* likewise: And the said *M.* by *H. K.* his attorney cometh and denieth the force and injury, when, *Ec.* and saith nothing in bar or preclusion of the aforesaid action of the aforesaid *J.* whereby the said *J.* remaineth undefended by the said *M.* by reason whereof the said *J.* ought to recover against the said *M.* his damages, occasioned by the non-performance of his said promises and undertakings; but because it is not known whether or no the said *N.* and *I.* will be convicted of the premisses; and if they shall be convicted, it is convenient and necessary that there should be only *one* taxation of damages for the whole premisses in one writ specified; and those damages ought to be settled by a jury of the country in that behalf; and that the writ of inquiry of damages aforesaid against the said *M.* be stayed, until the said issue as aforesaid between the said *J.* and the said *N.* and *I.* shall be determined; therefore, as well to try the issue between the said *J.* and the said *N.* and *I.* above joined, as also to inquire what damages the said *J.* hath sustained by occasion of the premisses aforesaid, the sheriff is commanded

The Attorney's Practice

that he cause to come here 12 free and lawful men of the body of his county, &c. by whom, &c. and who are not related to the said N. Y. or M. or the said J. to recognize, &c. because as well, &c.

Easter Term, &c.

Middlesex, *R. S.* of, &c. was attached to *to wit.* *R.* answer *R. T.* and *P. L.* in a plea of trespass upon the case, to their damage of 43 *l.* *Roll* 1022.

Afterwards, *to wit,* the 25th day of July in the 13th year of the reign of our lord the king that now is, the aforesaid *R. T.* and *P. L.* come by *H. P.* their attorney constituted by a special warrant to him in that behalf, before Sir *W. D.* knt. ch. just. of our said sovereign lord the king of the bench, at his chambers situate in *Serjeants Inn* in *Chancery Lane, London*, and acknowledged that they were satisfied of the aforesaid damages: Therefore let the said *R. S.* be discharged of those damages.

*Acknowledged the 25th day
of July 1777, at Ser-
jeants Inn, before me*

W. D.

†
Of suing out, entring, and returning
• Process on the Roll, in order to save
the Statute of Limitations, 21 *Jac.*
1. *chap.* 16.

THE attorney must make out *Precipe*
(a) for (b) original, according to nature of action; and carry same to filacer (c) of that county, wherein the *Venue* is laid; who will procure original, which is carried to the Sheriff's office, in order to be returned

(a) The Form of *Precipe* for original.

Middlesex, (ff) If *James Marriot* shall make you secure, in prosecuting his claim, then put by gages and safe pledges, *Charles Agate* late of *Paddington* in the said county, shopkeeper, &c. of a plea that whereas (as in *declaration* by original to end thereof.)

Returnable, &c.

J. R.

May 17, 1778.

(b) Form of special original.

George the third, &c. To the Sheriff of *Middlesex* greeting. If *James Marriot* shall make you secure in prosecuting his claim, then put by gages and pledges, &c. *Charles Agate* late of *Paddington* in your county, shop-keeper (as in *Precipe* and *declaration* to end of them) and have there the names of the pledges and this writ; witness ourself at *Westminster*, &c.

(c) Pay filacer for original, same as in common cases, and for filing return four-pence.

Non (d) inventus, this return is filed with the filacer.

If plaintiff is an attorney and sues ~~as~~ ^{such}, he makes out his attachment of privilege, in the usual (e) manner.

Attachment of privilege is in nature of an original writ, and when replied to, in order to save the statute, it is sufficient to shew the *Teste* thereof, without continuances to time of declaration. *Wilf. Rep. B. R.* 167. in error.

Proceedings against Peers, Members of Parliament, and their (f) Servants.

Plaintiffs may proceed and prosecute their suits against peers and members of parliament, notwithstanding their meetings; and their persons only are protected from arrest. By *Stat. 10 Geo. 3. Chap. 50.*

All suits brought against peers or members of parliament in this court, are by bill, as against an attorney or officer of the court.

(d) Pay sheriff returning original, or attachment *non est inventus*, eight-pence.

(e) See *ante* fol.

(f) Servants of peers and members of parliament, are by *stat. 10 Geo. 3. chap. 50.* deprived of every privilege they were intitled to from their respective lords and masters; and therefore may be prosecuted and arrested as common persons.

Form of the BILL.

Hilary Term, 18 Geo. 3.

To the justices of our lord the king of the bench.

Middlesex, *JANE CHAPMAN* by *John Rayner* her attorney, *com- Direction of the bill.*
to wit, plains of (a) *Hartwell Smythe* esq; having privilege of parliament, in a plea of trespass on the case, for that, *to wit,* That whereas, &c. [as in a common bill, according to the nature of the action to the end thereof, *viz.* bringeth (b) suit, &c.]

<i>J. R.</i> For the plfff.	} Pledges	{ <i>John Doe.</i>
For the deft.	} prosecute	{ <i>Rich. Roe.</i>

(a) If defendant be an *English* or *Scottish* peer, you describe him thus: "*William* duke of *N.* knight of the most noble order of the garter," and instead of "*Hartwell*" say "the said duke" all through the bill; omitting the words "having privilege of parliament": if defendant be an *Irish* peer, describe him thus, "*James Conolly* esq; commonly called the right honourable *James* earl of *W.*" and instead of *Hartwell*, say "the said *James Conolly*" but the words "having privilege of parliament" are not to be omitted, because the peers of that kingdom are considered only as commoners in *this*.

(b) See note in second vol. 243.

This bill must be engrossed on a table penny piece of parchment, and signed by one of the prothonotaries, for which he demands one shilling; and then be filed in the office of that filacer, of that county, wherein the *Venue* of the action is laid; his fee, for filing same, is two shillings and fourpence; and then a writ (c) of summons, is to be sued out.

This writ of summons must be subscribed with the name of the filacer of that county wherein the action is laid; whom you pay for signing it eight pence every sheet; at seal office seven pence, and for warrant thereon in order to summon defendant, 2s. 6d. which is done by sheriff's officer's leaving copy thereof at his last or most usual place of abode. If defendant does not appear in time, sue out a (d) *distringas*.

Pay filacer of the county in which the *Venue* to the action is laid, signing *distringas* eight pence, every sheet, sealing same seven pence.

If the defendant neglects to appear at the return of the *distringas*, a return thereof must be procured from the sheriff, for which his legal demand is 2s. 4d.; upon which

(c) For the Form, see 2 vol. 244.

(d) For Form see 2 vol. 244, 245. An order of court, requiring the appearance of a peer or member of parliament, may be enforced by *distringas*, by *stat. 10 Geo. 3. chap. 50*.

another *disfringas* must be sued out in same manner as the former, and a third, if necessary, when the plaintiff's attorney may move (e) in the treasury to encrease the issues, (f) which court will order to more than double the former issues, as appears by the following instances, even to the amount of the debt, though no report of such increase be found in *Barnes*.

The practice of this court had been till *Michaelmas* term, 20 *Geo. 2.* not to encrease the issues on *alias disfringas's* to more than double the issues returned from time to time, on the former *disfringas's*; but in that term, the court observing that the *King's bench* and *Exchequer* had done more, ordered, in conformity to their practice, issues to be returned on the *Pluries disfringas* to 20*l.* the debt sworn to, being 152*l.* (g). So to the like sum, four pounds issues, having been returned on the *alias disfringas*; and the

(e) This being a common motion of course, no notice thereof need be given, nor is any affidavit of facts, or state of proceedings necessary; the rule obtained of the court is to be drawn up with the secondary, for which you pay him five shillings, and sheriff must be served therewith; on whom call at return of *third disfringas*, and he will pay plaintiff's attorney the amount of the debt with costs, first deducting his own fees thereout, which are about 12*s.* 6*d.*

(f) The judges, previous to their sitting in court *in term time*, meet in the treasury chamber; which lies adjacent to court; where they hear those and such sort of common motions of course.

(g) *Barnes* 418.

debt sworn to being 230*l.* (*b*). So to the sum, two pounds having been returned on the first *distringas*; and the debt sworn to amounting to 1950*l.* (*i*). So to the sum of 100*l.*, 20*l.* having been returned on the *Pluries distringas*; and the debt sworn to being 290*l.* and (*k*) upwards.

If defendant appears after having cast an (*l*) effoin, or after return of the first writ of *distringas*; plaintiff must proceed as on a bill against an attorney, and when he hath obtained judgment he must sue out *distringas*'s as before, till he hath recovered debt and costs.

(*b*) *Barnes* 420.

(*i*) *Barnes* 420.

(*k*) *Barnes* 422.

(*l*) *Prat*, chief justice of this court said, that casting effoins was a very obsolete practice, and a great abuse of the law, being an unnecessary delay of justice, that if the practice was to be revived, it would be necessary to make a new rule of court, and that an effoin could not be cast by attorney. 2 *Wils. Rep. C. B.* 164.

BILL of Costs on proceedings against
Members of Parliament.

Easter Term, 1778.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Warrant to proceed and instructions	0	0	0	0	2	2	0	4	4
Drawing bill fo. 40	0	0	0	1	0	0	2	0	0
Fee to counsel to peruse and settle same	1	1	0	1	1	0	1	1	0
Attending him thereon	0	0	0	0	1	8	0	3	4
Parchment and duty for bill	0	2	6	0	2	6	0	2	6
Ingrossing same	0	0	0	0	6	8	0	13	4
Entering on the roll	0	0	0	0	6	8	0	13	4
Paid prothonotary	1	10	0	1	10	0	1	10	0
Ditto filicer for writ of summons	1	8	10	1	8	10	1	8	10
Parchment and duty	0	3	6	0	3	6	0	3	6
Fee thereon	0	0	0	0	1	8	0	3	4
Warrant and messenger	0	2	6	0	2	11	0	3	4
Service	0	0	0	0	2	6	0	5	0
Returning and filing	0	2	4	0	2	4	0	2	4
Term fee	0	0	0	0	2	6	0	5	0
Porters, letters, &c.	0	0	0	0	1	0	0	2	0

Trinity Term following.

Searching for appearance	0	0	0	0	1	8	0	3	4
Drawing decl. fo. 40	0	0	0	0	13	4	1	6	8

En-

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Engrossing and duty	0	2	0	0	8	8	0	15	0
Rule to plead	0	1	10	0	2	2	0	2	0
Searching for and demanding plea	0	0	0	0	2	8	0	5	4
Attending summons for time to plead	0	0	0	0	1	8	0	3	4
Copy of order	0	0	0	0	0	6	0	1	0
Instructions for replication	0	0	0	0	1	8	0	3	4
Drawing same, fol. 3	0	0	0	0	1	0	0	2	0
Ingrossing and duty	0	0	3	0	0	9	0	1	3
Fee to counsel to sign	0	10	6	0	10	6	0	10	6
Attending him	0	0	0	0	1	8	0	3	4
Rule to rejoin	0	1	10	0	2	2	0	2	6
Searching for and demanding rejoinder	0	0	0	0	2	8	0	6	4
Warrant and docquet	0	1	4	0	2	0	0	2	8
Drawing interlocutory judgment, fol. 3	0	0	0	0	1	6	0	3	0
Ingrossing proceedings on paper, and duty, fol. 43	0	1	3	0	7	11	0	15	7
Entering same on roll	0	0	0	0	7	2	0	14	4
Paid prothonotary	1	12	0	1	12	0	1	12	0
Writ of inquiry, parchment and duty	0	3	6	0	10	8	0	17	10
Paid signing and sealing	0	7	11	0	7	11	0	7	11
Fee thereon	0	0	0	0	1	8	0	3	4
Notice of executing same	0	0	0	0	1	0	0	2	0
Attending execution	0	0	0	0	6	8	0	13	4
Paid sheriff and jury	1	11	6	1	11	6	1	11	6
Stamp on inquisition	0	5	0	0	5	0	0	5	0

Attending

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending stamp office	0	0	0	0	1	8	0	3	4
Notice of taxing costs,		•							
con. ad service	0	0	0	0	1	0	0	2	0
Attending taxation	0	0	0	0	1	8	0	3	4
Paid prothonotary, signing final judgment	0	7	4	0	7	4	0	7	4
Paid clerk of judgments	0	2	0	0	2	0	0	2	0
Term fee	0	0	0	0	2	6	0	5	0
Letters and porters	0	0	0	0	1	0	0	2	0

References

References from Court.

ON cause being referred by the court, application must be made to Mr. Thomas Lloyd the associate, at his chambers *Lincoln's Inn, New Square*, for the order of reference, you pay for the order, if one cause only referred, four shillings and six pence, if more, in proportion to the length.

The respective attornies of the parties, set down on a piece of paper, the names of such witnesses, as either of them intends to examine on the references, and deliver the same to the crier of the (a) court; who will immediately after trial, upon the witnesses being brought up to the bar of the court, swear them, he charges two shillings for every witness sworn to give evidence, for either party.

It is usual for plaintiff's attorney to get (b)

(a) It is best for both attornies to get their respective witnesses sworn in court, or otherwise their clients must be at the expence of bringing them before a judge, for that purpose.

(b) Form of arbitrators appointment to sit on reference.

" I do appoint *Thursday* 19th day of this instant *February*, at eleven o'clock in the forenoon, at the sign of the *Sun Tavern* on *Leeson Green, Paddington*, in the county of *Middlesex*, kept by *William Haxell*, to sit upon the matters above referred to me. Dated second day of *February*, 1778."

James Ayate.

Witness *J. R.* plaintiff's attorney.

appointment

appointment from arbitrator, which, when obtained, he inserts at bottom of order of reference.

When plaintiff's attorney hath procured day of reference appointed by arbitrator, he delivers him copy of order of reference, and also a short brief of his client's case, with the names of the witnesses sworn to give evidence thereon.

Defendant's attorney must be served with an (c) exact copy of order of reference, with the arbitrator's appointment thereon.

Defendant's attorney also furnishes the arbitrator with a short brief of his client's case, with the names of the witnesses sworn in order to be examined for the purpose of supporting the same.

On day appointed for hearing the matters referred, the attorneys on both sides agree, with the concurrence of the arbitrator, how they shall proceed, and whether the parties themselves shall or shall not be suffered to be present, "during the investigation of the dispute, this being settled to mutual satisfaction, plaintiff's attorney opens his client's case, calls his witnesses, and substantiates the same by their (d) evidence; after which the

(c) This should be carefully examined with the original order and appointment, by the person who serves it, that he may be able to make an affidavit thereof, if necessary.

(d) Both attorneys have a right to cross examine the witnesses on the other side.

defence is entered into in like (e) manner, by the adverse party's attorney.

Both attorneys have a right, on summoning up the evidence, to reply to any matters, offered against the case made out on the evidence, for their respective clients.

In case the dispute or matters in difference, are long and intricate, arbitrator is at liberty to adjourn (f) awarding the same, as suits his conveniency, to a future day; provided he makes his award in writing within the time limited by the order of reference.

If arbitrator cannot, or does not make his award in writing in time, either party, on affidavit of the reasons thereof, may, on motion (g) in court procure (h) enlargement of time.

(e) The arbitrator takes minutes of the evidence given on both sides; and generally appoints a future day for making his award.

(f) It is most prudent for arbitrator's attorney to give the attorneys of both parties, notice in writing of the adjournments, in order to prevent all excuses for not attending, or pretence for suspecting any partiality in the arbitrator.

(g) Notice of this motion must be given, and affidavit of service thereof, annexed to former affidavit.

(h) If court grants further time, rule thereof must be drawn up with secondary, for which is paid five shillings, same must be served on arbitrator; and on his fixing a further time to arbitrate, same rule, with copy of his appointment must be served on both the attorneys.

Arbitrator's attorney draws up the (i) award from the minutes taken by the arbitrator; and when prepared and executed, he gives both the attorneys notice of it's being ready for delivery, that each may take away his part and pay for the same.

If party (k) in whose favour the award is made takes his part, and the other neglects coming to receive his, it will be necessary for the arbitrator to tender or cause to be tendered, his award, to the party refusing to accept the same, that, upon affidavit thereof, (l) order of reference may be made a rule (m) of court.

If order is not complied with, within the time directed by rule, an affidavit of service

(i) The award is decisive between the parties, unless it can be clearly proved to the court, that the same was made in direct opposition to evidence, or that the arbitrator acted corruptly or dishonestly in any respect; and even then application for relief must be made before the order of reference is made a rule of court, else he will be too late. The award recites the order of reference, and then runs as awards usually do, only observing the necessary alterations throughout, arising from the difference of being arbitrated by virtue of an order of court instead of bonds of arbitration: there must be two parts, each stamped with a *five shilling* impression.

(k) After award made, party in whose favor same is given, takes award from Mr Lloyd, with *Possea* indorsed, in order to complete his judgment.

(l) The costs at law are taxed by prothonotary on this order of *Nisi prius*, and he is governed thereby in his taxation.

(m) This rule is drawn up by the secondary, for which he is paid five shillings; it must be served on the disobedient party's attorney.

(n) there-

(*n*) thereof, court will grant an (*o*) attachment; this rule must be drawn up with secondary, for which he is paid five shillings.

If attachment is executed, court will not discharge party, till he has fully complied with award, and satisfied all costs incurred by his contempt.

Summonses.

Summonses are to be taken out before a judge of the court; pay for every of them and renewal, whether it be term time or vacation, two (*a*) shillings.

Summons, regularly (*b*) obtained, is a stay

(*n*) Which must be personal. *Barnes* 404.

(*o*) The rule for making the order an act of the court, must be taken to a clerk in court, in the crown office, who will thereupon make out the attachment, for which he charges 13s. and 4d. this is taken to the sheriff of the county in which the party to be attached, resides, who will make out a warrant for 2s. 6d.

(*a*) Summons taken out by an attorney of the court, if defendant, is seldom charged any thing.

(*b*) Judgment signed after summons for time to plead, supported by court, it appearing upon affidavit, that the same was not served till after rule to plead was out. *Barnes* 241, 242, 252, 254, 273. it is an abuse upon the judge to apply for his summons, after rule to plead expired, *Barnes* 252. for had he known the rule was out, he would not have granted the summons, the judge therefore was imposed upon. *Barnes* 254. but tho' such judgment is strictly regular, yet court set it aside on payment of costs, pleading general issue, and taking shortnotice of trial; *Barnes* 254. if they consider it as quick practice. See an instance in *Barnes* 265, 266.

stay of proceedings, till (a) discharged, or other order made thereupon. *Barnes* 252.

True copy of all summonses must be (b) served on proper parties; which should be examined with the originals previous to their service, because it may be necessary to make affidavit thereof.

Summons must be attended an hour before it can regularly be renewed, and when it is, it is marked on the side "*second summons*," and served and attended as before; if not attended within the hour, it must be renewed, marked "*third summons*," and served; if not timely attended, upon affidavit (c) thereof, judge's clerk will procure
you

(a) Because judge is not supposed to know the state of the cause, in which the summons is granted, the same being issued of course, on application.

(b) The party's attorney must always be served, in case he hath one, if not, it must be left at his last or most usual place of abode, unless *personal* service is required.

(c) The form of which may be thus :

In the Common Pleas.

Jane Chapman,
against
John Rayner.

George Hazel, of Gray's Inn, in the county of Middlesex, gentleman, clerk to Charles Benton, attorney for the plaintiff in this cause, maketh oath and saith, that he this deponent on the 13th, 14th, and 15th days of this instant June, severally served the summons hereunto annexed, by severally delivering true copies thereof to William Rily, attorney for the defendant in this

you an (d) order for the matter contained in the summons; which must be served in like manner as summonses.

It summons issues for any matter, which the suitors of the court are, by any rule or order thereof, bound to obey, or in which the judge cannot make an order *ex parte*, the non-attendance of the attorney, in cases wherein it is his duty to attend to enable the judge to do the party justice, or non-compliance of the client, will subject them (on judge's order being made a rule of court, to obtain which is a motion of course) to an attachment of contempt.

The matter for which summonses are granted, are very various; some, and the most usual, are for the following purposes, *viz.* to pay (e) debt and costs; to shew cause why

cause, and at the same time shewing him the said annexed original summons. And this deponent further saith, that on the *three* several days and times therein mentioned he only attended an hour thereon, but that the said *William Nibby*, or his agent, or any other person on their or either of their behalfs, did not on either of the said three several days aforesaid attend thereon, to the knowledge or belief of this deponent.

Sworn, &c.

G. H

(d) You pay judge's clerk two shillings for every order.

(e) The debt must be ascertained between the parties, before any order can be obtained. If party applying doth not pay the costs, when taxed, or at the time given by the order, the other side may proceed, as if no such order had been obtained. Defendant on this summons may obtain five or six *cts.* to pay debt and costs, but the

why common bail should not be accepted, instead of special (*f*); when affidavit for latter is not sufficient or well founded; for time to put in bail above; for leave to add to and perfect bail; for liberty to justify bail; and for time to plead.

If judge makes an order, for any of the above matters, which he generally does of course, if the party applies in time; it will be upon condition to observe the following (*g*) terms, *viz.* pleading (*h*) issuably, rejoining (*i*) *gratis*, taking (*k*) short notice of trial, or of inquiry, if necessary, within term.

Where application is made, in a *town* cause, for time to put in, add to, or perfect bail; or for time to plead, defendant's attorney will be obliged to enter into an order to plead an issuable plea: and if he afterwards pleads a dilatory plea, or such an one as prevents the law being argued, or the fact tried thereon; judgment may be signed

the judge will hold him to above mentioned terms, of pleading issuably, &c. if early in the cause, so that plaintiff may not be delayed of trial, in case defendant does not comply with the order.

(*f*) The grounds of this application must be supported by affidavit.

(*g*) Party will not be bound to all the terms, *viz.* pleading issuably, &c. on first summons, unless state of cause requires them.

(*h*) See *P.* 182, note (*a*)

(*i*) See *Id.* note (*b*)

(*k*) See *Id.* note (*c*)

as if no plea had been pleaded, and give notice of executing writ of inquiry.

Summons for (l) time to plead was served upon plaintiff's attorney, who attended an hour; but defendant's attorney never came; whereupon plaintiff's attorney signed judgment, which was set aside by court as irregular, because he had not previously discharged defendant's summons. *Barnes* 240.

In another case, plaintiff's attorney signed judgment, though he did not attend or discharge defendant's summons, or give him an opportunity to renew cause, defendant's attorney having offered to plead issuably, and take notice of trial, time enough for plaintiff to have tried his cause at last assizes; this judgment the court declared to be irregular, the summons not being discharged, and accordingly set it aside. *Barnes* 255.

Prisoner may apply by summons (m) for an order for a *superfedeas*, on not being declared against in two (n) terms after return of writ.

Bankrupt must (o) summon plaintiff before a judge, to shew cause why he should

(l) Judge's summons, or order for time to plead shall be no bar to motion to change *venue*. *Barnes* 489.

(m) On neglect to attend the judge, he will make an order to discharge prisoner on *first* summons, for that is peremptory, this being a case of liberty.

(n) The term wherein the writ is made returnable, is always considered as one of the terms.

(o) The order of discharge or *superfedeas* will be granted on the *first* summons.

not

not be discharged out of custody, having surrendered himself in discharge of his bail, and obtained his certificate; which he producing duly allowed. by the lord chancellor, judge will make an order directed to the *p*) warden or keeper of the prison in which bankrupt is confined, to discharge him without fee or reward, he being detained at no other person's suit, since the bankruptcy. See *Barnes* 104.

Defendant may be discharged when in custody, after his bail is perfected, by (*q*) summons also before a judge.

An infant may have a summons granted him, for plaintiff to shew cause why defendant should not name a guardian to defend his suit.

Summons for an attorney to deliver in to his client, a bill of his fees and disbursements.

THIS summons should have the title of the causes, in which he makes his demand, on the margin thereof.

If the attorney neglects to attend, *three* summonses having been issued and served

(*p*) If prisoner is not in custody of warden, he must be discharged by writ of *superfideas*, for an order in this case will only obtain the *superfideas*, not authorize a discharge.

(*q*) But three summonses, and affidavit of their being regularly served, are necessary in this case.

for that purpose, the judge will order him *ex parte* to deliver his bill of fees and disbursements in a reasonable time, and if he makes further default on his being served with a rule of court, (which is made of course upon motion and affidavit of the service and neglect of attending the three summonses,) an attachment of contempt will issue, upon which no bail is accepted, and the attorney can clear his contempt by no method but obeying the order of the judge, the rule of court, and paying the costs of the attachment.

If the attorney delivers his bill, in obedience to the judge's order, party must take out a summons to shew cause, why the bill of fees and disbursements delivered by him in the above named causes, should not be referred to the prothonotary to be taxed; in case the attorney neglects to attend, being regularly served with three summonses, on affidavit thereof, and of attending thereon, and the client undertaking, in writing under his hand, to pay the attorney the whole sum, that shall appear to be due to him on the taxation, the judge, on his application, will order the bill *ex parte* to be referred to the prothonotary to be taxed; whereon he makes an appointment for that purpose, at the bottom thereof; which order, with the appointment of taxation, must be served on the attorney, whose bill is referred; in case the attorney does not attend, being duly served with three appointments, the prothonotary, on affidavit thereof, and
of

of the regular attendances thereon, will tax the bill referred *ex parte*.

Pending the summons, order, and taxation, nor after (if the sum, at which the bill is taxed, is tendered the attorney) he cannot bring an action. See *ante* 49. *stat. 2 Geo. II. chap. 23. sect. 23. ante* 46, 47, 48.

On defendant's delivering a dilatory plea, if plaintiff makes up and delivers paper book; this amounts to a waiver of the agreement between the parties on judge's order, whereby plaintiff loses his remedy thereon, and must then proceed on paper book, as if no such order had ever been made.

Defendant may obtain *further* time, if not under all the above terms, provided such order does not prevent cause being tried same term in which writ was made returnable; in case he could have gone to trial, had no time been granted.

Where cause of action, in country causes, is local, and cannot be tried but at the assizes, judge will be governed in his orders, in all the above cases, according to the time of holding the assizes, so as not to prevent cause from being tried at the then next assizes, if plaintiff chuses it.

In case either party resides in the country, and cause of action is transitory, same doctrine is held as in a town cause, allowing for difference of notices to bring same to issue.

Mistakes in declaration or issue, may be amended (a) by summons.

Proceedings on bail-bond, are stayed by order obtained on summons; provided trial be not lost thereby, for in that case not even the court itself on motion, will make a rule for that purpose: and in case judge makes an order, he will oblige defendant to perfect his bail previous thereto; and also to pay (b) costs, receive a declaration, plead issuable, take short notice of trial (c), so that the issue may be tried same term.

Mutual Debts, and Set offs.

Where there are mutual debts between plaintiff and defendant, or if either party sue, or be sued, as executor, or administrator, where there are mutual debts between testator or intestate, and either party; one debt may be set off against the other;

(a) All proceedings, while on paper, are amendable by summons, by the established practice of this court; except declaration in *judgment*, which court considers as first process in that action.

(i) If the costs, when *taxed*, be not paid, the action on the bail-bond may be prosecuted, as if no order had been made.

(c) If trial hath been lost, bail must consent that judgment may be entered against them on the bail-bond for plaintiff's security.

and

and such matter may be given in (a) evidence, upon the general (b) issue, or pleaded in bar, as the case shall require, so as at the time of pleading the general issue, (c) notice be given of the particular sum or debt, intended to be insisted upon, and upon what account it became due, Stat. 2 Geo. 2. chap. 22. sect. (d) 13.

(a) Before this clause of the act, mutual debts were to be pleaded specially in bar. *Rayn. Read.* on stat. 2 Geo. 2. chap. 22. sect. 13. p. 31.

(b) General issue in this clause, means any general issue. *Barnes* 290 *Pul. Ni. Pri.* 171, 178.

(c) Reason of directing notice to be given of the particular sum intended to be set off, on pleading general issue, is, that plaintiff may thereby know nature of defendant's demands, and be prepared to controvert them, as well as prove his own. *Rayn Read.* 31. This notice cannot be amended, but defendant may withdraw his plea, and plead *de novo*, with new notice of set-off. *Barnes* 308, 309. Trial not to be put off, for absence of witness, who only proves this notice. *Barnes* 437. Plea tho' with notice of set-off must be delivered in town. *Rich. Pract. Reg.* 125, 281.

(d) It had, it seems, been a practice in the courts of *Wexminster Hall*, (founded on principles of common law) to disallow stoppage or retaining as payment, and for persons mutually indebted to bring action against each other; whether their respective debts were of a less or equal amount, or of the same nature; the numberless vexations and real hardships this practice was daily productive of, induced the great and good Lord Chancellor *Talbot* to promote this law, (which is founded on the strictest ideas of equity and justice) to remedy the enormous evil in question. *Reamer's* reading on this clause, p. 24. which is perpetuated by stat. 8 Geo. 2. chap. 24. sect. 4. because (says the legislature, in the preamble thereto) the provision was highly just and reasonable at all times.

Not-

Notwithstanding however the salubrity of this clause many (e) doubts were entertained in courts of justice, concerning the legal construction thereof; the principal opinions have been collected by a gentleman (f) of some authority in the profession, to whom we refer (g) the learned reader.

These doubts occasioning (h) contrariety of opinions, the legislature (i) thought proper to interfere, by enacting that "where there are mutual debts between plaintiff and defendant, and defendant's demand (and for which the action is brought) exceeds plaintiff's, the same shall be given in evidence," and for that purpose the defendant usually pleads the general issue, and delivers a notice of set-off; which plea and notice are to be engrossed on a treble penny stamp sheet of paper, and left with the plaintiff's attorney; the person who leaves them must engross another copy of the plea and notice on a like stamp sheet of paper, in order to read the same on the trial of the cause.

In case defendant's demand does not countervail plaintiff's, defendant must move court wherein action is depending, for leave to pay so much money therein, as, with his

(e) See *Barnes* 290, 354. *Rich. Pract. Reg.* 267.

(f) *John Rayner*, author of the read^gs above referred to.

(g) *Rayn. Read.* 24, 25, &c.

(h) *Id.* 28.

(i) By stat. § *Geo.* 2. chap. 24. sect. 5.

own demand, will be sufficient to satisfy plaintiff's.

Rule obtained on this motion must be drawn up and served, by annexing copy thereof to general issue and notice; another copy of plea and notice is to be engrossed as before observed, for the purpose of reading same on the trial of the cause, if necessary.

General issue with notice of set-off.

In the common pleas.

*Easter term, in the 18th year of the
reign of king George the third.*

*Jane Chapman, spinster
against
John Rayner.*

AND the said *John*, by *Charles Singleton Darrington* his attorney, comes and defends the wrong and injury. when, &c. and saith that he did not undertake and promise in manner and form as the said *Jane* above complains against him; and of this he puts himself upon the country.

Take (a) notice that the above named

(a) In the notice of set-off, the usual way is for defendant to traverse the counts in plaintiff's declaration, according to the nature of the case.

defendant intends to give in evidence, and insist upon the trial of this cause, that the above named plaintiff, at the time of suing forth the original writ against the said defendant in this cause, was and still is indebted to the said defendant in 40*l.* of lawful money of *Great Britain*, for divers goods, wares and merchandizes of the said defendant by the said defendant, to the said plaintiff, at her special instance and request, sold and delivered; and also in 40*l.* of like lawful money, for so much money by the said defendant, to and for the use of the said plaintiff, at her like special instance and request, paid, laid out, and expended. And also in other 40*l.* of like lawful money, for so much money, by the said plaintiff, to the use of the said defendant, had and received; and that the said several sums of money, or so much thereof as may be necessary, will be set off in satisfaction of and against the money supposed to be due to the said plaintiff, for the matters contained in the declaration in this cause, according to the form of the statute in such case lately made and provided. Dated the 21st day of *February*, 1778.

Your's, &c.

C. S. Darrington, attorney
for defendant.

To *William Stock*, attorney
for the plaintiff.

Indorsement

Indorsement.

Easter Term, 18 Geo. 3.

Chapman spinster }
and } Plea and notice of set-off.
Rayner. }

JUDgment of *B. R.* ordered to be set off against judgment of *C. B.* and balance due to plaintiff, to be paid by defendant in *C. B. 3 Wilf. Rep. 396.*

In case of a set-off, where an indorsed note is set-off by defendant against plaintiff's demand, it must be proved that indorser's name was written before plea pleaded. *Barnes 453.*

Motions.

ALL motions (*a*) must be made in open court, (except such as are made in the treasury,) for which purpose the serjeant who moves, must be furnished with an affidavit, stating the fact, on which he grounds his motion; if it is a matter of course, it is

(*a*) On these motions, rules, whether *Nisi* or absolute, must be drawn up with secondary, and paid for, according to length.

granted,

granted, in the first instance, without reading the affidavit; if it is to be discussed before and by the court, notice must be given in writing of the intended motion, and the purport of it, to the adverse party's attorney, and affidavit of the service, as well of the merits must be produced to the court, which being read, a rule to shew cause is generally granted; this must be (b) served on adverse party's attorney, and an affidavit thereof prepared against the time appointed by the court for the opposite side to shew cause; whereupon he takes copies of all the affidavits, otherwise he will not be permitted to shew cause, which, for that purpose, are filed in the prothonotary's office.

The facts whereon these applications are made, vary extremely, but the most usual follow.

*For error in process, or the notice
subscribed thereto.*

Previous to this motion, notice in writing must be given to the opposite party's attorney; a copy whereof, and of the writ

(b) To make perfect service of rule, original must be sworn to have been shewn to party, at time of service. Barnes says at time of serving copy, see Barnes 403. this expression seems absurd, for the original is served by delivering or leaving copy. N. B. This doctrine does not hold in service of process. Barnes 302. where same absurdity is repeated, but he hath adopted our mode of expression in p. 422.

(a) served,

(a) served, an affidavit stating the error in the writ, and that he was served with no (b) other, together with the affidavit of service, must also be annexed, in order to be read in court, when the (c) motion is made; whereupon court grants a rule, *nisi*, which must be served; on affidavit whereof court makes same absolute, and directs costs of application, at discretion; if cause be shewn, process must be produced.

Error (d) on writ of inquiry, or execution thereof.

This (e) motion requires notice, affidavit thereof, and of facts; upon reading which, rule *nisi* will be granted, it must be served; on affidavit whereof, court will make same absolute, and order costs, at their discre-

(a) Whenever defendant will take advantage of a mistake in the process of the court, he must produce the copy served. *Barnes* 298.

(b) *Barnes* 298.

(c) This motion must be made, before interlocutory judgment signed, *Barnes* 256, 296. *ante* 92. or court will not interfere, so as to prevent suit being carried on to judgment.

(d) If defendant takes any step in cause after error committed by plaintiff, in his proceedings, such step cures the irregularity, and court will not afterwards redress defendant; and so *vice versa*.

(b) It must be moved, before rule on inquiry is out, else court will not release.

tion; if cause be shewn, inquiry must be produced.

To set aside assignment (c) of bail bond.

If plaintiff hath been irregular in taking the assignment, the court (d) will set it aside, on defendant's putting in and perfecting his bail; and will subject plaintiff to the costs of the application.

For payment of money into court, and for conciliums.

No notice or affidavit of facts is required on either of these motions. See more as to payment of money, *ante* 155 to 160. both inclusive.

For changing the Venue.'

No notice requisite, only affidavit, this motion cannot be made last day of term, because (e) there is not a day left in term, for plaintiff to shew cause, and though defendant could not procure affidavit for that purpose (f) sooner. See more on this subject, *ante* 161 to 165.

(c) For more on this subject. See *ante* 118.

(d) But the application by *summons* is a much easier expence.

(e) *Barnes* 480. *ante* 163.

(f) *Barnes* 486.

For special Jury.

Neither notice nor affidavit required. See *ante* 215, 216.

To put off trial for want of a material witness.

This motion requires notice and an affidavit of service; and also of the (g) absence of a witness, and that he is (b) material, where he is, and when he is expected to be subpoenaable; and the motion must be made (i) two days, before the day of trial, or the court will (k) refuse it.

This affidavit must be made by defendant (l) himself, and by no (m) other person; belief

(g) *Barnes* 437, 440, 452.

(b) *Ante* 215. If the witness sworn to be absent, is to prove notice of set-off only, court considering that matter as a collateral defence, refused to put off the trial, observing that no trial had been ever put off on that account. *Barnes* 437.

(i) It appearing, the witness being material was a matter that did not come to defendant's knowledge time enough to move two days before last day appointed for trial, the same was put off. *Barnes* 452.

(k) *Barnes* 438, 442, 444.

(l) *Barnes* 437.

(m) This was overruled, court observing, that there might be many cases, in which a *third* person could swear another to be a material witness, and defendant

belief (*n*) only will not do. For more on this subject see *ante* 215.

For new (o) trials or in (p) arrest of judgment.

If party, against whom verdict is obtained on trial, or judgment on inquiry, would have new trial or inquisition, or would arrest judgment on either; it must be done, if on verdict, before or on appearance day (*q*) of return of *Hab. Corp. Jur.* and on inquiry before time given to move in arrest of judgment is (*r*) expired.

Motion to set aside verdict must be made before judgment pronounced. *Ante* 219.

himself could not; and instanced a factor selling goods for his principal, and employing a porter to deliver them; in this case factor would know porter to be a material witness, but principal did not.

(*n*) *Barnes* 437, 448.

(*o*) See *ante* 219. Where any matter of title is in dispute, and defendant obtains a verdict, court will not grant plaintiff a new trial, unless revenue is concerned, *Barnes* 440. nor in case verdict be for defendant on a penal statute. *Barnes* 464. nor in ejectment, if verdict for defendant, otherwise if for plaintiff.

(*p*) See *ante* 219. Court will not arrest judgment on matter party might have availed himself of, before issue joined. *M. S. Cas.*

(*q*) *Barnes* 445.

(*r*) Unless the foundation of the motion, be some matter discovered afterwards. *Barnes* 442. *ante* 219.

If new trial or inquisition be denied, party may afterwards move, on proper affidavit of facts, to arrest judgment; but after motion in arrest of judgment made and refused, new trial or inquisition cannot be obtained.

In order to obtain arrest of judgment, on *poslea* or inquiry, the first motion is for (s) rule to bring them into court; affidavit must be made of service of rule, and both annexed to affidavit of facts, on which the motion in arrest of judgment is grounded.

The court will set aside proceedings for any irregularity on either side, in the course of a suit, so as the party complained against be not put to a greater expence, than he would have been subject to, had the motion been made before.

If plaintiff enter appearance for defendant, before his time to enter same, is expired; this irregularity must be complained of, before judgment, *ante* 107.

Defendant cannot move to set interlocutory judgment aside, unless motion be made two days before day appointed for (t) execution of writ of inquiry of damages. *Barnes* 255, 372.

If papers are required to be delivered up, which attorney refuses, court on motion will rule him so to do, or issue attachment.

(s) Which must be drawn up with secondary, paid for 5s. and served.

(t) So must an application for any irregularity in delivery or notice of declaration, *ante* 134.

BILL of COSTS on Motion to set aside JUDGMENT.

Michaelmas Term, 1778.

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Office copy of defendant's attorney's affidavit, at 8 <i>d.</i> per folio, besides duty									
Close copy sent, at 4 <i>d.</i> per folio	0	0	0	0	1	8	0	3	4
Affidavit of plaintiff, at 8 <i>d.</i> per folio, besides duty and oath	0	2	7	0	8	7	0	13	7
Affidavit of plaintiff's attorney, fo. 18, at same rate	0	2	7	0	9	7	0	14	7
Another fo. 5	0	2	7	0	4	3	0	5	11
Brief of affidavits, fo. 48, at 2 <i>d.</i> per folio	0	0	0	0	6	8	0	13	4
Office copy of rule nisi	0	3	6	0	3	6	0	3	6
Fair copy of brief for council, four sheets	0	0	0	0	6	8	0	13	4
Fee to serjeant therewith	2	2	0	2	2	0	2	2	0
Attending him and court when rule discharged with costs	0	0	0	0	3	4	0	6	8
Rule	0	5	0	0	5	0	0	5	0
Copy and service	0	0	0	0	1	0	0	2	0
Drawing bill of extra costs	0	0	0	0	0	6	0	1	0
							Attending		

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending taxing same	0	0	0	0	1	8	0	3	4
Term fee and letters	0	0	0	0	3	6	0	7	0
<i>Fi. fa.</i>	0	3	0	0	6	6	0	10	0
Warrant thereon, and messenger	0	2	4	0	2	10	0	3	4
Officer for levy	1	1	0	1	1	0	1	1	0
Poundage on 80 <i>l.</i> at rate of 1 <i>s.</i> per pound									

Action for Crim. Con.

IN cases of this kind, which differ from actions brought upon contracts, no bail is required, unless by the special (*a*) order of a judge, which defendant hath a right to apply to court to (*b*) discharge, if not well founded. *Ricb. Pract. Reg.* 63.

This action not being considered, as a mere action of assault and battery, within the meaning of *stat.* 22 and 23 *Car* II. *chap.* 9. *sect.* 136. but an action founded on special damage; be the damages given by the jury ever so small, plaintiff shall have full costs, without certificate of judge, under said act of parliament. 3 *Wils. Rep.* 319.

(*a*) *Catmur* was held to bail upon lord chief justice's order, upon affidavits of *Crim. Con.* with *Haddernveck's* wife, and had four days time to put in same. *Barnes* 61.

(*b*) *Catmur* applied to court, and upon reading affidavits of himself and *Haddernveck's* wife, that *Haddernveck* having been long beyond seas, and she having had advice of his death, received *Catmur's* addresses, and married him as her second husband; the chief justice, (to whom *Catmur* had before applied at his chambers, and before whom the above affidavits were read, and who ordered him to apply to court,) was of opinion, that the order for bail ought to be discharged, nothing criminal appearing in *Catmur*, *Fortescue* and *Reeve*, j. thought, that entering into foundation of order, was examining merits of cause, and therefore improper before trial. *Denton* j. was absent. *Barnes* 61.

Trial at bar granted, the damages laid in the declaration, being (c) considerable, and a great (d) number of witnesses to be examined; plaintiff having liberty to examine a witness in an ill state of health, before a judge in the mean time, and defendant consenting to waive his privilege of (e) parliament. *Barnes* 438. *Rich. Reg.* 411. *Co. Cas.* 103.

Plaintiff must prove his (f) marriage on the trial; which may be done, either by copy of register, or by testimony of one who was present at ceremony; and it is sufficient to prove the marriage, according to form of any religion, as of Anabaptists, Quakers, Jews, &c. *Bul. Ni. Pri.* 28.

(c) *Viz.* 50,000*l.* *Rich. Reg.* 411. *Barnes* 438.

(d) Upwards of 20. *Barnes* 438.

(e) *Quere*, the authority of a court of justice to enjoin a member of parliament to waive his privilege, he not being at liberty to do it, according to the better opinion, without leave of the house, first obtained by order therein, on motion; for it is not a personal common right, but a public special privilege, founded in political convenience, and therefore does not seem to fall within even the rule of "*Quilibet potest renunciare jure pro se introducto*," mentioned by the English "*Servius Sulpitius*." See 2 *Inst.* 183.

(f) *Pratt*, ch. j. delivered it as the opinion of this court, that "defendant's having seriously and solemnly declared, he knew the woman he had seduced was plaintiff's wife," would be evidence proper to be left to the jury, *without proving the marriage.* *Will. Rep. B. R.* 399.

Wife's confession will be no evidence against (g) defendant; so letters (b) written to her by defendant, may be read as evidence against him.

Proper plea under statute of limitations, [viz. 21 Jac. I. chap. 16.] is not guilty within six years. *Introduct. (i) to Law relative to Trials at Ni. Pr.* 28.

Directions for inrolling Deeds.

CARRY the deed to a judge, either at his chambers or house, or, if in term time, it may be done in *Westminster Hall*; in case of a bargain and sale, one of the parties must attend and acknowledge it; but if the deed only requires the judge's *fiat*, then the party need not attend, for the judge grants a *fiat* (a) of course, which, as well

(g) But a discourse between her and him, may be proved. Trial at *Ni. Pr.* 28.

(b) But her letters to him will be no evidence for him. *Id. ib.*

(i) This introduction is said to be originally wrote by lord chancellor *Bathurst*, and revised by Mr. *J. Buller*.

(a) The *fiat* is wrote on the margin of the deed, generally by the judge's clerk; the form whereof may be as follows: "Let this deed be inrolled in his majesty's court of *Common Pleas*, at *Westminster*. [If a Roman Catholic deed, add the words "*pursuant to the act of parliament*" immediately after the word "*Westminster*."] Dated this 20th day of *March* 1778, before

George Nares,
(judge's name)

as the (b) acknowledgement, are the officer's warrant for inrolling the deed.

Clerk of (c) warrants of attorney, supplies you with rolls *gratis*, for ingrossing (d) the deeds on.

If attorney ingrosses the deed; after examining the same, he takes it to warrant of attorney's office, and the (e) clerk will immediately indorse, docquet, and inroll it, being obliged so to do.

All deeds inrolled are docquetted or entered in alphabetical order in warrant of attorney's office, for the convenience of those who may have occasion to search, or take copies or extracts thereof.

(b) The acknowledgement is wrote on the margin of the deed, generally by the judge's clerk; the form whereof may be as follows:

"The execution of this deed was acknowledged (in court) by *James Cox*, (*the person acknowledging same*) party thereto, this 20th day of *April* 1778, before

GEORGE NARES."

(c) His office is kept at N^o. 6. *Clifford's Inn, Fleet Street*.

(d) Clerk of warrant, if desired, is obliged to ingross the deed upon the rolls.

(e) It not being necessary in this court, as in *King's Bench*, for attorney to indorse deed, or carry in docquet.

Fees for inrolling.

	Off. Ch.			Attorn.		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Acknowledging in court	0	1	0	0	1	0
Before a judge at chambers	0	5	0	0	5	0
<i>Fiat</i> ———	0	2	6	0	2	6
Inrolling per sheet (92 words)	0	0	3	0	0	8
Docqueting — —	0	1	0	0	3	4

A Rule

A Rule or Measure of Costs comprehending such Items of Disbursements and Fees, as have not occurred, or been before submitted to the Reader, in the former Part of this volume.

WRITS.		l.	s.	d.
N ON omittas capias —		0	10	2
Attachment of contempt		0	8	3
Attachment proper —		0	8	3
Testatum attachment —		0	10	6
Subpoena ducens tecum —		0	8	0
Drawing and ingrossing Scire facias } per sheet each —		0	0	8
besides fee —		0	6	8
Special original, per sheet —		0	0	8
Fee —		0	6	8
Writ of possession fee 3s. 4d. }		0	5	0
Making the writ 1s. 8d. — }		0	5	0
Test. Fi. Fa. and Ca. Sa. each		0	10	6

SERVICE, &c.

Serving notice of declaration, or executing a writ of inquiry (if under 20 miles 3d. per mile to and from the place, i. e. 6d. per mile in the whole.

The like allowance in case of conduct-money.

If

	<i>l.</i>	<i>s.</i>	<i>d.</i>
If above 20 miles, for a neighbouring attorney ————	0	10	6
To allow 1 <i>s.</i> 4 <i>d.</i> for every defendant the plaintiff appears for, over and above the 5 <i>s.</i> 4 <i>d.</i> allowed for the first defendant.			
Enttring appearance between attorney and client ————	0	5	4
Copies of affidavits in order to shew cause, <i>per sheet</i> ————	0	0	4

ACTIONS on judgments or statutes.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Drawing, <i>per sheet</i> ————	0	0	8
Copying ————	0	0	8
Enttring ———— ————	0	0	8
Term fee ————	0	6	8

ISSUES, &c

Drawing forejudger 2 <i>s.</i> ingrossing the whole, <i>per sheet</i> ————	0	0	4
Drawing and ingrossing affidavit, <i>per sheet</i> ————	0	0	8
Drawing judgment 2 <i>s.</i> ingrossing the whole, <i>per sheet</i> ————	0	0	4

Preparing for TRIAL.

Town witnesses (if the charge exceeds 40 <i>s.</i> allowed in common costs) <i>per diem</i> ————	0	2	6
Country witnesses, <i>per diem</i> ————	0	5	0
Attend-			

l. s. d.

Attending the trial every day	6s.	
8d. and on the day of trial, between attorney and client		0 13 4
If between party and party, in the whole		0 13 4

BAIL-BONDS.

Common costs in the sheriff's name	2	10	0
On an assignment, if judgment by <i>Nil dicat</i>	4	10	6
For every three sheets more	0	10	0
If the plaintiff enter appearance for defendant, more	1	0	0
On <i>Comper' ad diem</i> , the old way	3	10	0
On the new way	5	10	0
For every 3 sheets above 12 in a declaration	0	10	0

NON PROS.

For not declaring where appearance	1	13	4
With bail, more	0	10	0
For not replying	2	13	4
If bail, more	0	10	0
For not joining in demurrer to declaration	3	6	8
Bail, more	0	10	0
And for every other pleading more, if short	1	0	0
For not entering issue	3	3	4
Bail more	0	10	0
For every count more than the first	0	3	0

COGN.

COGN' DAMPN'.

		<i>l.</i>	<i>s.</i>	<i>d.</i>
1. Narr' the same	—	5	0	0
Of different terms	—	5	10	0
Every Narr' more	—	0	10	0
With bail more	—	0	10	0

By DEFAULT.

Inquiry 1 Narr'	—	7	10	0
Every Narr' more	—	0	10	0
If plaintiff enters appearance		1	0	0
If in trespass and imprisonment, assault, &c.		7	16	8
If plaintiff enter appearances		8	16	8

T R I A L S.

Common costs 1 count	—	14	10	0
For every count more	—	0	10	0
For trespass, assault, or imprisonment, 5 sheets or under		14	16	8
Every three sheets more	—	0	10	0
In ejectment, on demise	—	15	16	8
Every demise more	—	0	10	0
Common costs for not confess- ing lease, entry and ouster on the rule		16	16	8
Attending taxing costs, though many causes in a bill, only con- sidered as one cause, so only		0	3	4

O B S E R V A T I O N S.

1. Nothing for attending a sheriff or marshal in any case.

2. Decla-

2. Declaration where *Habeas corpus* is brought to follow the office the *Habeas corpus* is signed in.

3. Counts in a declaration, at the suit of attorney, unless it appears on the face of the declaration, that he sues for fees, are to be paid for; and no privilege where he is defendant, either as to appearance or pleading.

4. No declaration to be allowed if the plaintiff be summoned the day before the return; but if served upon the return-day, then declaration and entry to be allowed if declaration produced.

5. No maps to be allowed on trials *inter parties*.

6. No wrong or under-charge to be supplied in any manner, except in fee for passing record when only charged 3*s.* 4*d.* instead of 6*s.* 8*d.*

7. Nothing extraordinary to be allowed for arresting defendant, or serving him with process than the usual fee of 10*s.* 6*d.* and 5*s.* for extraordinary expence and trouble, even between attorney and client, unless by the latter's express orders.

Plaintiff's BILL of DISBURSEMENTS and FEES, on Defendant's being arrested.

Easter Term, 1778.

	Out of pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Instructions, &c.	0	0	0	0	2	2	0	4	4
Affidavit of debt	0	2	7	0	4	1	0	5	7
<i>Test. Cap.</i> out of <i>Mid.</i>									
into <i>London</i>	0	8	9	0	14	10	1	1	0
Warrant and messenger	0	0	6	0	1	0	0	1	6
Paid officer	0	10	6	0	10	6	0	10	6

Trinity Term following.

Searching whether bail filed	0	0	0	0	1	8	0	3	4
Enttring exception there- to, and notice there- of, copy and service	0	0	0	0	1	3	0	2	6
Motion in Treasury for sheriff to return <i>ca-</i> <p><i>pias</i></p>	0	0	0	0	1	8	0	3	4
Rule	0	4	6	0	4	6	0	4	6
Copy and service	0	0	0	0	1	0	0	2	0
Attending court when other bail added and justified	0	0	0	0	1	8	0	3	4
Declaration 1 <i>s.</i> per fol.									

Enttring

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Entring on roll and paid prothonotary	0	6	0	0	8	0	0	10	0
Copy on stamp deliver- ed folio 10, warrant and duty	0	0	3	0	2	3	0	4	3

*If Defendant was served with Copy of Writ only,
and not arrested, the Items will be as follow:*

<i>Instruitions, &c.</i>	0	0	0	0	2	2	0	4	4
<i>Capias</i>	0	4	10	0	7	11	0	11	0
<i>Cap. per cont.</i>	0	3	6	0	6	7	0	9	8
<i>Two copies and service</i>	0	0	0	0	5	0	0	10	0
<i>Searching for appearance</i>	0	0	0	0	1	8	0	3	4
<i>Affidavit of service of process</i>	0	2	7	0	4	1	0	5	7
<i>Appearance pursuant to the statute</i>	0	2	6	0	4	2	0	5	10
<i>Declaration and copy 1 s. per folio</i>	0	0	0	0	6	0	0	12	0
<i>Entry on roll, and paid prothonotary</i>	0	6	8	0	9	4	0	12	0
<i>Copy on stamp left in of- fice, warrant and duty</i>	0	0	3	0	2	7	0	4	11
<i>Notice of declaration filed, copy and service</i>	0	0	0	0	1	0	0	2	0
<i>Rule to plead</i>	0	1	10	0	2	2	0	2	6
<i>Searching for, and de- manding plea</i>	0	0	0	0	2	8	0	5	4
<i>General issue</i>	0	0	0	0	0	6	0	1	0

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Drawing part of issue, at 8 <i>d.</i> per folio									
Copy of whole issue, at rate of 4 <i>d.</i> per folio									
Entry of issue on roll, and paid prothonota- ries	0	6	0	0	9	0	0	12	0
Warrants of attorney	0	0	8	0	1	8	0	2	8
Entering cause for trial	0	13	0	0	13	4	0	13	4
Attending for that pur- pose	0	0	0	0	1	8	0	3	4
Notice of trial, copy and service	0	0	0	0	1	0	0	2	0
Stamp and parchment for record	0	6	6	0	6	6	0	6	6
Ingrossing, at 4 <i>d.</i> per folio									
Paid prothonotary mark- ing same	0	1	0	0	1	0	0	1	0
Sealing record, jurata, and seal	0	11	2	0	11	2	0	11	2
For ingrossing same	0	0	0	0	3	4	0	6	8
Venire	0	4	0	0	6	2	0	8	4
Return thereof	0	2	6	0	2	6	0	2	6
<i>Hab. Corp. jur.</i>	0	4	5	0	6	8	0	9	0
<i>Subpœna</i>	0	3	8	0	5	4	0	7	0
Four tickets	0	0	0	0	1	0	0	2	0
Service	0	0	0	0	5	0	0	10	0
Conduct money	0	4	0	0	4	0	0	4	0
Instructions for brief	0	0	0	0	3	4	0	6	8
Drawing same, two sheets	0	0	0	0	6	8	0	13	4

Two

In the Court of Common Pleas. 643

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Two fair copies for council	0	0	0	0	6	8	0	13	4
Fee to serjeant <i>W.</i> with brief	4	4	0	4	4	0	4	4	0
To his clerk	0	2	6	0	2	6	0	2	6
Fee to serjeant <i>S.</i> with brief	1	1	0	1	1	0	1	1	0
To his clerk	0	2	6	0	2	6	0	2	6
Attending council	0	0	0	0	3	4	0	6	8
<i>May</i> 20, attending court	0	0	0	0	3	4	0	6	8
Making cause <i>remanet</i>	0	4	0	0	4	0	0	4	0
Refealing record	0	1	0	0	1	0	0	1	0
Attending for that purpose	0	0	0	0	1	8	0	3	4
Refealing <i>distingas</i>	0	0	1	0	0	1	0	0	1
Ditto <i>spa</i>	0	0	1	0	0	1	0	0	1
30th, Attending court when plaintiff non-suited	0	0	0	0	6	8	0	13	4
Court fees about	1	7	8	1	7	8	1	7	8
Term fee, letters, &c.	0	0	0	0	3	6	0	7	0

Michaelmas Term following.

Motion at side bar for notice of time of taxing costs	0	0	0	0	1	8	0	3	4
Rule	0	0	0	0	4	0	0	4	0
Copy and service	0	0	0	0	1	0	0	2	0
Stamping <i>postea</i>	0	5	0	0	5	0	0	5	0

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending	0	0	0	0	1	8	0	3	4
Bill of costs and copy	0	0	0	0	2	6	0	5	0
Notice of taxing costs	0	0	0	0	1	0	0	2	0
Taxing same	0	0	0	0	1	8	0	2	6
Prothonotary	0	5	4	0	5	4	0	5	4
Clerk of judgments	0	2	6	0	2	6	0	2	6
Term fee, letters, &c.	0	0	0	0	3	0	0	7	0

Defendant's BILL of FEES and DISBURSEMENTS on putting in Bail under an Arrest.

Trinity Vacation, 1777.

Instructions and warrant to defend	0	0	0	0	2	2	0	4	4
Copy of writ from sheriff	0	0	4	0	0	6	0	1	0
Allowing bail by judge [If term time only 5s.]	0	12	0	0	12	0	0	12	0
Ditto by filacer	0	4	6	0	4	6	0	4	6
Notice thereof, copy and service	0	0	0	0	1	6	0	3	0
Notice of justification, copy and service	0	0	0	0	1	6	0	3	0
Affidavit thereof	0	2	7	0	4	1	0	5	7
Paid filacer attending court	0	3	4	0	3	4	0	3	4
To council to move	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4

in the Court of Common Pleas. 645

If Bail justifies at Judge's Chambers, the Items are,

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
<i>Paid filacer attending judge</i>	0	3	4	0	3	4	0	3	4
<i>Attending judge</i>	0	0	0	0	1	8	0	3	4

N. B. *Then no Affidavit of Justification is necessary, when the Fees, &c. are as follows:*

<i>Instructions and warrant to defend</i>	0	0	0	0	2	2	0	4	4
<i>Copy of writ from sheriff, and postage</i>	0	0	6	0	1	0	0	1	6
<i>Special bail piece and duty</i>	0	2	2	0	3	10	0	5	6
<i>Paid acknowledgement before commissioner</i>	0	3	6	0	3	6	0	3	6
<i>Attending him thereon</i>	0	0	0	0	1	8	0	3	4
<i>Affidavit of justification</i>	0	2	7	0	4	1	0	5	7
<i>Attending judge</i>	0	0	0	0	1	8	0	3	4
<i>Paid filing bail, and affidavit of justification with filacer</i>	0	7	0	0	7	0	0	7	0
<i>Attending for that purpose</i>	0	0	0	0	1	8	0	3	4
<i>Notice thereof, copy and service</i>	0	0	0	0	1	6	0	3	0
<i>Letters, &c.</i>	0	0	6	0	1	6	0	2	6

**BILL of Fees, &c. when Cause tried by
special Jury.**

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>d.</i>	<i>d.</i>
Instructions to move	0	0	0	0	1	3	0	2	6
To council for motion	0	10	6	0	10	6	0	10	6
Attending him and court	0	0	0	0	1	8	0	3	4
Rule	0	4	0	0	4	0	0	4	0
Copy and service, with prothonotary's ap- pointment	0	0	0	0	1	0	0	2	0
His fee	2	2	0	2	2	0	2	2	0
Attending to name, 48	0	0	0	0	3	4	0	6	8
Copies of lints	0	2	6	0	2	6	0	2	6
Sheriff attending with book of freeholders	2	2	0	2	2	0	2	2	0
Striking out 24	0	0	0	0	1	8	0	3	4
Copy thereof	0	2	6	0	2	6	0	2	6
Special <i>Hab. Corp. fur.</i>	0	9	2	0	10	4	0	12	6
Returning same	0	12	0	0	12	0	0	12	0
Sheriff summoning jury	2	2	0	2	2	0	2	2	0
Each juryman 1 guinea	12	12	0	12	12	0	12	12	0

Costs on a View.

Affidavit of necessity of	0	2	7	0	4	1	0	5	7
view	0	10	6	0	10	6	0	10	6
To council to move	0	0	0	0	1	8	0	3	4
Attending him and court									

Rule

In the Court of Common Pleas. 647

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Rule	0	8	0	0	8	0	0	8	0
Copy and service	0	0	0	0	1	0	0	2	0
Meeting at sheriff's office to settle view	0	0	0	0	3	4	0	6	8
Summoning jury for view	1	1	0	1	1	0	1	1	0
Each juryman thereon 1 guinea	12	12	0	12	12	0	12	12	0
Sheriff	2	2	0	2	2	0	2	2	0
Expences for coach-hire, at coffee house, and for refreshments									
Attending view	0	0	0	0	10	6	1	1	0
Surveying and mapping premises in question	5	5	0	5	5	0	5	5	0
Three copies for counsel	0	0	0	0	15	0	1	10	0
Surveyor attending trial	1	1	0	1	1	0	1	1	0

BILL of COSTS on entering Satisfaction on Judgment.

If in Term Time.

Warrant of attorney to acknowledge satisfaction on record	0	5	1	0	10	6	1	1	0
Searching docket for number roll of judgment	0	0	0	0	1	8	0	3	4
Paid for every term 4d.									
	Total						Clear		

	Out of Pocket			Agent			Attorney		
	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>	<i>l.</i>	<i>s.</i>	<i>d.</i>
Clerk of treasury drawing and entring	0	2	0	0	2	0	0	2	0
Cryer bringing roll into court	0	1	0	0	1	0	0	1	0
Prothonotary	0	2	0	0	2	0	0	2	0
Secondary	0	1	0	0	1	0	0	1	0
To him for entring satisfaction	0	4	0	0	4	0	0	4	0
To box at the rate of one shilling for every 100 <i>l.</i> mentioned in judgment.									
Attending Westminster	0	0	0	0	1	8	0	3	4
Term fee, letters, &c.	0	0	0	0	3	0	0	6	0

If in Vacation.

<i>Fiat</i> parchment and ingrossing	0	0	2	0	1	10	0	3	6
Chief justice's clerk	0	12	0	0	12	0	0	12	0
Prothonotary	0	2	0	0	2	0	0	2	0
Clerk of judgments	0	5	4	0	5	4	0	5	4
Fee on acknowledging satisfaction	0	0	0	0	3	4	0	6	8
If judgment above ten years old, clerk of treasury more	0	4	0	0	4	0	0	4	0

Of the duty and fees of the sheriff of Middlesex, his under-sheriff, &c.

IT is the duty of the sheriff of *Middlesex*, by himself and deputies, to attend all his majesty's courts, judges, justices and commissioners within his county; and to execute all writs and processess by them and every of them directed to him; and also to hold his county-courts, tourns and court leets within the same.

The sheriff of *Middlesex*, who are also sheriffs of *London*, is nominated by the citizens thereof; and are, as sheriffs of *London*, at much greater expence in passing through their office than the sheriff of any other county in *England*; and therefore oblige their under-sheriff of *Middlesex*, out of the fees and profits arising from that office, to advance money from time to time to pay all rewards payable by the said sheriff for apprehending highwaymen and other malefactors, which are given by several acts of parliament, and to pay the wages of the justices of peace attending at the several sessions of the peace for the said county of *Middlesex*, and to bear part of the expence of the entertainments at the sessions of gaol-delivery held in the *Old-bailly, London*, for the county of *Middlesex*, which, together with other charges incident to the said office, amounts annually at least to the sum of 450*l*. For the dispatch of the business of the county he keeps his office in *Took's Court, Carey Street, Lincoln's*

Lincoln's Inn Fields, wherein, besides his own attendance, three clerks are daily employed (*Sundays* and holidays excepted); they have no salary nor wages, but the allowance hereafter mentioned out of the fees. And in consideration of his giving security to the said sheriff in the sum of 12,000*l.* to indemnify him from all damages and losses that may happen from the mistake, omission or misdemeanor of him, his deputies, clerks or bailiffs, the sheriff hath granted to him all the lawful fees, profits and perquisites belonging to the said office; and in virtue thereof he claims the several fees and sums of money hereafter mentioned, which are all the fees belonging to the said office, except what may be claimed by the county clerk.

in the Court of Common Pleas. 651

Sheriff. Clerks. Total.

	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
To the charge of passing the sheriff's accounts for <i>Middlesex</i> in the <i>Exchequer</i> by Stat. 3 Geo. 2.	119 3 0		-
Of every bailiff, when admitted into his office, in lieu of all fees due to the sheriff on arrests that may come to his hands, except fees on executions (commonly called <i>poundage</i> .)	6 10 0		
Of every bailiff more for his indenture of covenants and bond to perform the same, and attending the execution thereof		1 1 6	-
For every warrant on a bill of <i>Middlesex</i> , <i>Capias</i> or <i>Quo minus</i>	0 0 4		
For every name more than one		0 0 4	
For every warrant on a special <i>Capias</i> or <i>Quo minus</i> , <i>i. e.</i> containing the whole declaration	0 0 4	0 2 0	0 2 4
For every warrant on a writ of <i>Scire facias</i> , extent, <i>Elegit</i> , summons against privileged persons, original in real or personal actions, <i>Pone</i> , <i>Ven. facias</i> out of the <i>Exchequer</i> , attachment for the peace out of the crown office, <i>Distingas</i> , writ of possession, <i>capias</i> excommunication, <i>Ne exeat regno</i> , <i>Supplicavit</i> , and <i>Capias si laicus</i>		0 2 4	
For every bail bond taken in the office, (which rarely happens, the bond being usually taken from defendants in custody, by the bailiff,) for searching the office and making a <i>Superfedeas</i> to set the defendant at liberty		0 9 4	
For taking security on a writ of <i>Ne exeat regno</i> ; searching the office, and <i>Superfedeas</i> to set the defendant at liberty		1 1 0	

For

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For a bond on an attachment <i>pro pace</i> out of the crown office		0 2 4	
For taking security on a writ of <i>Supplicavit</i> , which rarely happens, searching the office, and for <i>superfedeas</i> to set the defendant at liberty		0 10 6	
For the assignment of every bail bond	0 2 4		
For the plaintiff's discharge for the same	0 2 4	0 5 0	
For the return of the writ	0 0 4		
For the delivering up of a bail bond back to the debt. by the plt.'s order		0 5 0	
Fees for returns of writs			
For allowing every writ of <i>Habeas corpus cum causa</i>	0 4 8		
For the return thereof, if but one writ to be returned against the defendant	0 2 4	0 2 0	0 7 4
For a warrant to the bailiff to conduct the defendant before the judge or court, as the writ is returned	0 2 4		0 9 4
For every other writ against the defendant returned thereon	0 2 0	0 0 4	0 2 4
If the defendant is in the gaol, then for a warrant to the keeper to deliver the defendant to the bailiff		0 2 4	
For executing a writ of inquiry of damages and return of the inquisition thereon	0 10 0	0 3 4	
To the bailiff for summoning and swearing the jury	0 4 0		
For the use of the court-house or room where the writ is executed	0 1 0		1 10 4
To the jurors, each 1s.	0 12 0		
	0 17 0		
For swearing each witness		0 0 4	

For

in the Court of Common Pleas. 653

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For taking an inquisition on a <i>Capias utlagatum</i> , Schedule of the goods seised and return thereof		0 18 6	
To the bailiff for summoning the jury	0 4 0		
To the use of the room where the inquisition is taken	0 1 0		1 15 6
To the jurymen, each 1s.	0 12 0		
	0 17 0		
If more than one finding, for every other		0 3 4	
The like on extents		0 18 6	
For every finding, if more than one, each		0 3 4	
Attending each adjournment		0 10 0	
For a summons for a witness to give evidence		0 2 0	
For taking an inquisition on a <i>Scire fieri</i> inquiry, inquisition and return thereof	0 10 0	0 8 6	0 18 6
For the return of a <i>Capi corpus</i> or <i>Non invent.</i> on every bill of <i>Middlesex</i> , <i>Capias</i> , <i>Quo minus</i> , <i>Capias ad satisfaciendum</i> , and <i>Capias utlagatum</i> , if on inquisition taken		0 0 4	
For the like return, if by a bailiff of a liberty		0 0 8	
Return of <i>Istud breve</i>		0 0 4	
For returning <i>Fieri feci</i> on a <i>Fieri facias</i>		0 2 0	
If by the bailiff of a liberty		0 4 0	
For returning <i>Nulla bona</i> thereon		0 1 0	
If by the bailiff of a liberty		0 2 0	
For special returns, such as rescue, defendant discharged by <i>Superfedeas</i> , or committed to the <i>Fleet</i> or <i>King's Bench</i> prison on a writ of <i>Habeas corpus</i>		0 2 4	
For the return of <i>Venditioni exponas</i>		0 2 0	
For the return of <i>Scire feci</i> , each name		0 2 0	

For

	Sheriff.	Clerks.	Total.
	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
For the return of <i>Nilil</i> or <i>Mortuus</i> on a <i>Scire facias</i>		0 1 0	
For the return of an escape warrant		0 2 0	
For the return of a <i>Venire facias</i> , summons against privileged persons, or original that the deft. is summoned		0 2 0	
For the return of a <i>Nilil</i> thereon		0 1 0	
For the return of <i>Non invent.</i> on an attachment out of the courts of Chancery, Exchequer, or dutchy of Lancaster.		0 1 0	
For the return of a <i>Capi corpus</i> thereon		0 2 0	
For the return of <i>Non invent.</i> on a proclamation out of the courts of Chancery, Exchequer, or dutchy of Lancaster		0 2 0	
For the allowance of every writ of <i>Superseatas</i> or restitution	0 2 0	0 0 4	0 2 4
For a warrant thereon to discharge the defendant's body or goods out of custody		0 2 4	
For the return of a writ of <i>Venire facias juratores</i> , with the panel of 48 freeholders names thereto annexed	0 2 0		
For the return of a writ of <i>Disfringas</i> or <i>Habeas corpora</i> , with a panel of 48 freeholders names annexed thereto	0 12 0		

N. B. The sheriff makes up a panel of 48 jurymen for each court in *Westminster-hall* every term, but before he can do that by his officer, he inquires after a competent number of persons names taken out of the freeholders book for that purpose; makes out a warrant to his bailiffs to summons them; delivers a panel to the marshal of each chief justice or chief baron; attends the court by himself or deputy during each sessions of *Nisi prius*, and after term enters the names of each jurymen in an alphabetical register, and gives certificates to each jurymen of his attendance (if required); for all which no fee is claimed or taken.

For

in the Court of Common Pleas. 655

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For the return of a writ of possession		0	2
Attending the master of the <i>King's bench</i> office, prothonotary of the court of <i>Common Pleas</i> , or deputy remembrancer of the court of <i>Exchequer</i> , from the plaintiff and defendant, each one guinea	2	2	0
For attending with the jury on a view and certifying to the court that the view has been had, the same fee as is paid to each jurymen			
For attending every trial at bar, or at <i>Nisi prius</i> , where a special jury is summoned, the same fee as is given to each jurymen after the trial			
<i>N. B.</i> The last mentioned fee is taken by the under-sheriff or clerk who attends the trial.			
For every warrant to a bailiff to summon a special jury		0	2
<i>Fees called poundage.</i>			
For taking a defendant in execution, or levying the goods, for every sum of money not exceeding 100 <i>l.</i> for every 20 <i>s</i> thereof	0	1	0
For every 20 <i>s</i> . exceeding that sum	0	0	6
For the like on an extent, <i>Fieri facias</i> , or <i>Capias ad satisfaciendum</i> at the suit of the king	0	1	6
For every 20 <i>s</i> . after the first 100 <i>l.</i>	0	1	0
For every 20 <i>s</i> levied on a <i>Levari facias</i> the summons of the pipe or green wax (except post fines)	0	1	0
For executing every writ of possession for every 20 <i>s</i> . of the yearly value of the premises, of which possession is given	0	1	0

For

	Sheriff.			Clerks.			Total.		
	l.	s.	d.	l.	s.	d.	l.	s.	d.
For the return of a precept to summon the jury before the commissioners in a commission of ideocy or lunacy, and attending thereon	2	2	0						
For the return of a <i>Venire facias jur'</i> and attending the trial of a traverse at the sessions of the peace on every indictment except for felony, or where the defendant is in prison				0	10	0			
<i>N. B.</i> The sheriff summonses, impanels and returns 8 grand juries in the year at the several sessions of the peace at <i>Hicks's hall</i> , and attends by his deputy during all the time of the sessions there, and also returns 8 juries in the year at the several sessions at the <i>Old Bailey</i> , besides party juries and juries of matrons; and attends there without any other fee or reward whatsoever.									
For a bill of sale of goods on a <i>Fieri facias</i> , and an inventory thereunto annexed				0	9	0			
For a bill of sale of a term of years				0	13	4			
The like on a <i>Venditioni exponas</i>				0	13	4			
For allowing a writ of <i>Non ponend. in assf.</i>				0	13	4			
For charging a defendant in custody with every other writ than that on which he is arrested				0	2	4			
For a certificate in order for a <i>Superfed.</i>				0	2	4			
For a certificate that the defendant is in execution in order for his discharge by the late act of parliament				0	2	4			
For his discharge by the rule of court thereon				Nothing					
For attending with writs and other things out of the office to be produced on trial, for each day's attendance				0	6	8			

For

Sheriff. Clerks. Total.

	l. s. d.	l. s. d.	l. s. d.
For the plaintiff's discharge on every writ of <i>Terr facias</i> , whereon money has been levied, or on a <i>Capias ad satisfaciend.</i> executed on the defendant, and on every writ on which the defendant is committed to the gaol		0 2 4	
For searching the books and files, and a warrant to the keeper of <i>Newgate</i> to discharge the defendant out of custody.		0 2 4	
<i>N. B.</i> The defendants are oftener discharged out of <i>Newgate</i> without paying any fees than with. Copies of writs are given, and searches are made for prisoners in <i>Newgate</i> without any fees for the same			
For every copy of		0 0 4	
For a short copy of a writ in order to put in bail by		0 0 6	
For searching for a writ in force; which is never done but upon the undertaking of some attorney to put in bail thereto		0 1 0	
For a copy of a bill of <i>Middlesex</i> , <i>Capias</i> or <i>Quo minus</i> at length		0 1 0	
For copies of all writs or other things for every sheet of copy wrote		0 0 6	
For executing and returning a writ of false judgment, or <i>Accedas ad cur'</i>		0 6 8	

Fees for executing a writ of *Ad quod damnum* cannot well be settled, but must be left to the sheriff and the party to be adjusted between them, because the inquisition on this writ is always taken on the place where the highway to be inclosed lies, or where the intended fair or market is to be held: which may occasion the sheriff's travelling a considerable journey.

Fees for executing a writ of partition cannot well be settled for the same reason; and a provision is made by *Stat. 8 & 9 W. 3. c. 31.* for settling the same in case the sheriffs and the parties cannot agree.

Sheriff. Clerks. Total.

	<i>l. s. d.</i>	<i>l. s. d.</i>	<i>l. s. d.</i>
For attending lord mayor, as conservator of the river <i>Thames</i> ; making warrants on the writs of <i>Capias</i> , and summons and returning the same, and for summoning, impanelling and returning the grand jury at the first court in every year, the water-bailiff pays		1 1 0	
For attending the lord mayor at the second court in every year, and returning the summons and <i>Capias</i> process, the water-bailiff pays		0 10 6	
For summoning, impanelling, and returning the traverse jury, and attending the trials there, which very rarely happens		0 10 0	
For returning, summoning and impanelling a jury, and attending commissioners in a commission out of the <i>Exchequer</i> to find debts		0 10 0	
For the like on a forcible entry before two justices, which happens but very seldom		0 10 0	
For a warrant on a precept for two justices to remove the force after such inquisition taken		0 2 4	

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Atter-

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5. A quaker taking the solemn affirmation, may be admitted an attorney. 44
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7. No attorney to have more than two clerks at one time; prothonotaries may have three clerks. 45
8. Attorney with consent of attorney of another court, may practice in such court. 45
9. Attorney permitting one, who is not, to practice in his name, disabled to practice. 45
10. Attorney may be admitted a solicitor. 46
11. Attorney of the *King's Bench* not to be admitted of *C. P.* without a new stamp. 46
12. No attorney to commence an action for fees,

£c. until a month after a bill delivered and signed.

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14. No action to be brought pending the reference. 47
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49. Attornies who have discontinued, been forejudged, or put out of the roll, not to have writ of privilege or attachment. 61
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Page 597. In margin for "direction" read "form." *P. 608. L. 8.* for "the" read "though." Line 9 after "court" add "will." Before "summonces" add "on order of reference from court, party seeking relief, must apply before award made, unless on some irregularity in award, and then before order is made rule of court, or he will be too late". *P. 622.* dele See *C. B. pract. 92.* in margent. *P. 650. L. 12,* after "the" add "under-sheriff's" and before "him" add "by the high sheriff." *P. 856. L. 21* for "party" read "petty."

